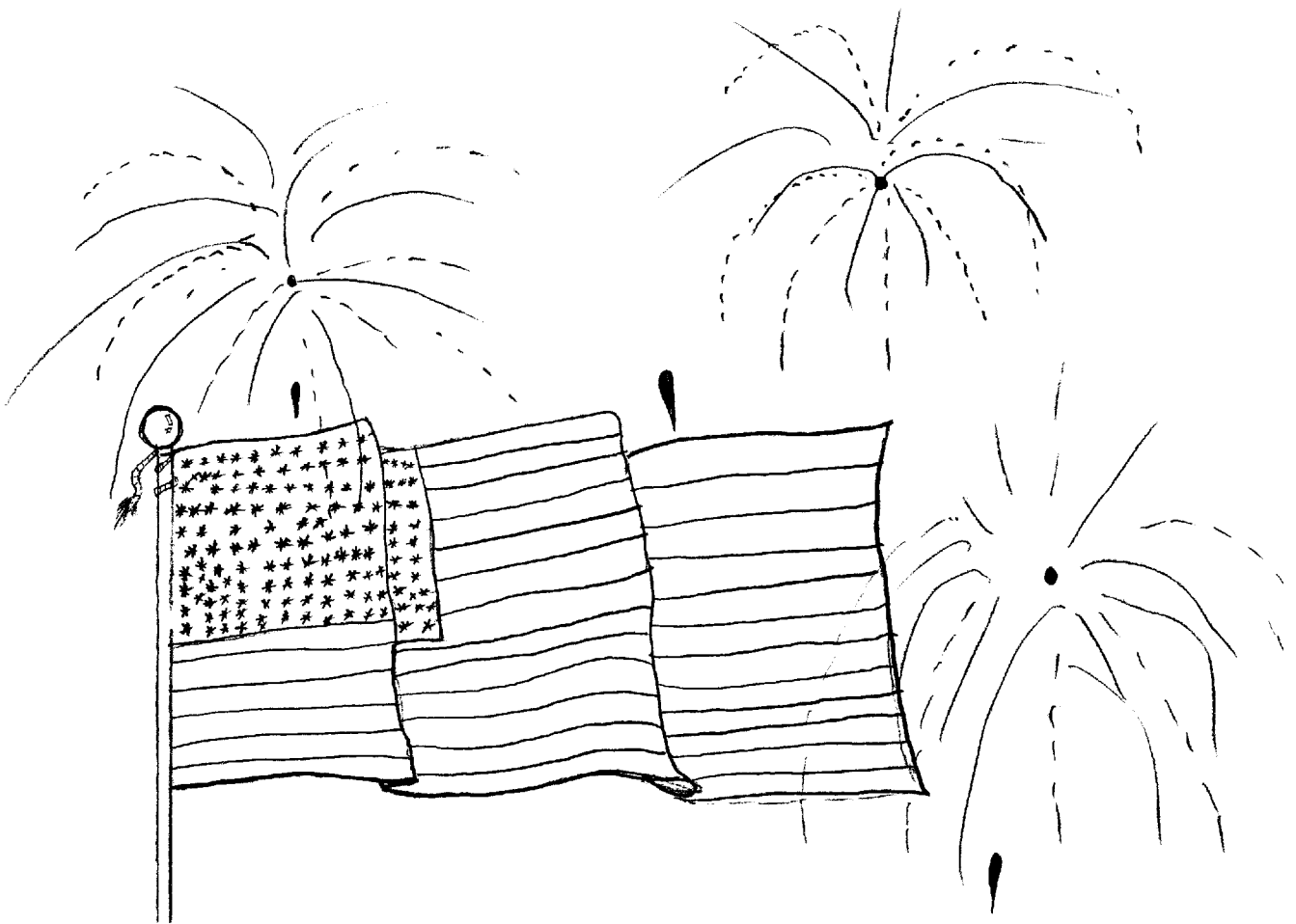

TEXAS REGISTER

Volume 30 Number 30

July 29, 2005

Pages 4265-4382



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*.

***Texas Register*, (ISSN 0362-4781)**, is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year \$240. First Class mail subscriptions are available at a cost of \$300 per year. Single copies of most issues for the current year are available at \$10 per copy in printed format.

Material in the ***Texas Register*** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the ***Texas Register*** Director, provided no such republication shall bear the legend ***Texas Register*** or "Official" without the written permission of the director.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Austin, Texas and additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register***, P.O. Box 13824, Austin, TX 78711-3824.

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
<http://www.sos.state.tx.us>
subadmin@sos.state.tx.us

Secretary of State –
Roger Williams
Director - Dan Procter

Staff
Ada Aulet
Leti Benavides
Dana Blanton
Carla Carter
Kris Hogan
Roberta Knight
Jill S. Ledbetter
Juanita Ledesma
Diana Muniz
Shadrock Roberts

IN THIS ISSUE

ATTORNEY GENERAL

Request for Opinions	4271
Opinions	4272

PROPOSED RULES

TEXAS ETHICS COMMISSION

REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES	
1 TAC §20.527	4273

STATE OFFICE OF ADMINISTRATIVE HEARINGS

RULES OF PROCEDURE	
1 TAC §§155.23, 155.29, 155.30, 155.55, 155.59	4273
TEMPORARY ADMINISTRATIVE LAW JUDGES	
1 TAC §157.1	4276

ARBITRATION PROCEDURES FOR CERTAIN ENFORCEMENT ACTIONS OF THE TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES	
1 TAC §§163.1 - 163.7, 163.9, 163.11, 163.13, 163.15, 163.17, 163.19, 163.21, 163.25, 163.27, 163.29, 163.31, 163.33, 163.37, 163.39, 163.41, 163.59, 163.61, 163.65, 163.67, 163.69.....	4277

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID HEALTH SERVICES	
1 TAC §§354.1015, 354.1021, 354.1023	4283
1 TAC §354.1052	4285
1 TAC §354.1102	4286
1 TAC §§354.1231, 354.1233, 354.1235	4287
MEDICAID ELIGIBILITY	
1 TAC §358.105	4290
1 TAC §358.200, §358.210	4292
1 TAC §358.465	4292

TEXAS DEPARTMENT OF LICENSING AND REGULATION

CAREER COUNSELING SERVICES	
16 TAC §§62.1, 62.10, 62.20, 62.21, 62.40, 62.60, 62.70, 62.71, 62.80, 62.90.....	4293

TEXAS RACING COMMISSION

RACETRACK LICENSES AND OPERATIONS	
16 TAC §309.8	4294
16 TAC §309.120	4294
16 TAC §309.164	4295
OTHER LICENSES	
16 TAC §311.211	4295

OFFICIALS AND RULES OF HORSE RACING	
16 TAC §313.501	4296

TEXAS LOTTERY COMMISSION

CHARITABLE BINGO ADMINISTRATIVE RULES	
16 TAC §402.102	4296

TEXAS STATE BOARD OF PLUMBING EXAMINERS

ADMINISTRATION	
22 TAC §361.6	4297

TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

RULES OF PROFESSIONAL CONDUCT	
22 TAC §501.72	4298
22 TAC §501.81	4299
22 TAC §501.83	4300
22 TAC §501.83	4301
22 TAC §501.86.....	4302

THE BOARD	
22 TAC §505.10	4303

CERTIFICATION AS A CPA	
22 TAC §511.57	4303

LICENSES	
22 TAC §515.8	4305

FEE SCHEDULE	
22 TAC §521.2	4306

CONTINUING PROFESSIONAL EDUCATION	
22 TAC §523.112	4307

TEXAS DEPARTMENT OF INSURANCE

PROPERTY AND CASUALTY INSURANCE	
28 TAC §5.9912	4308

OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

RULES OF THE TEXAS STATEWIDE EMERGENCY SERVICES RETIREMENT FUND	
34 TAC §§301.1 - 301.12.....	4309

GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM	
34 TAC §302.1 - 302.5.....	4309

MEMBERSHIP IN THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM	
34 TAC §304.1, §304.2	4310

CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM	
--	--

34 TAC §306.1	4311
BENEFITS FROM THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM	
34 TAC §§308.1 - 308.4.....	4312
ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM	
34 TAC §§310.1 - 310.9.....	4313
TEXAS DEPARTMENT OF PUBLIC SAFETY	
COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES	
37 TAC §4.1	4314
37 TAC §§4.11, 4.13, 4.16.....	4315
PRIVATE SECURITY	
37 TAC §35.233.....	4320
TEXAS YOUTH COMMISSION	
TREATMENT	
37 TAC §87.67	4321
YOUTH RIGHTS AND REMEDIES	
37 TAC §93.1	4321
37 TAC §93.12.....	4322
37 TAC §93.33	4325
37 TAC §93.53	4327
YOUTH DISCIPLINE	
37 TAC §95.21	4328
SECURITY AND CONTROL	
37 TAC §97.36.....	4331
ADOPTED RULES	
TEXAS ETHICS COMMISSION	
REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES	
1 TAC §20.33, §20.35.....	4333
TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY	
FEE SCHEDULE	
22 TAC §521.13	4333
PEER REVIEW	
22 TAC §527.6	4333
GENERAL LAND OFFICE	
HEARING PROCEDURES FOR ADMINISTRATIVE PENALTIES AND REMOVAL OF UNAUTHORIZED OR DANGEROUS STRUCTURES ON STATE LAND	
31 TAC 17.1 - 17.3, 17.7, 17.39, 17.41, 17.46 - 17.48, 17.50	4334

DEPARTMENT OF AGING AND DISABILITY SERVICES

 MENTAL RETARDATION AUTHORITY RESPONSIBILITIES

40 TAC §§2.553 - 2.556, 2.558, 2.562.....	4335
40 TAC §§2.563 - 2.565.....	4335

TEXAS VETERANS LAND BOARD

 VETERANS HOMES

40 TAC §176.7	4335
---------------------	------

RULE REVIEW

Proposed Rule Review

Texas Board of Pardons and Paroles.....	4337
---	------

Adopted Rule Reviews

General Land Office.....	4338
Texas Real Estate Commission	4339
Texas Veterans Land Board.....	4339

IN ADDITION

Texas Department of Agriculture

Request for Proposals: Texas Yes! Matching Fund Program.....	4341
--	------

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program.....	4342
---	------

Office of Consumer Credit Commissioner

Notice of Rate Ceilings.....	4343
------------------------------	------

Credit Union Department

Applications for a Merger or Consolidation	4343
Application to Amend Articles of Incorporation	4344
Applications to Expand Field of Membership.....	4344
Notice of Final Action Taken.....	4344
Public Hearing Notice.....	4344

Texas Commission on Environmental Quality

Enforcement Orders	4345
Notice of District Petition	4350
Notice of Water Quality Applications.....	4352
Proposal for Decision.....	4353
Proposal for Decision	4353
Proposal for Decision	4353
Proposed Enforcement Orders	4354

Department of State Health Services

Licensing Actions for Radioactive Materials.....	4357
--	------

Notice of Availability of Texas Community Mental Health Services State Plan (Federal Community Mental Health Block Grant).....	4360	Notice of Application for Service Provider Certificate of Operating Authority	4379
Texas Higher Education Coordinating Board		Notice of Filing Made for Approval of a Tariff Rate Change Pursuant to P.U.C. Substantive Rule §26.171	4379
Request for Offers for Consulting Services	4360	Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214	4379
Request for Qualifications: Bond and Program Counsel.....	4366	Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214	4379
Texas Department of Insurance		Notice of Petition for Waiver of Denial of Request for NXX Code 4380	
Company Licensing	4367	Texas Department of Transportation	
Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier	4367	Request for Competing Proposals and Qualifications	4380
Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer	4367	University of North Texas	
Texas Lottery Commission		Notice of Request for Information (RFI) for Outside Legal Services Related to Intellectual Property Matters	4381
Instant Game Number 580 "Junior Jumbo Bucks"	4368	Notice of Request for Information (RFI) for Outside Legal Services Related to Real Estate, Oil and Gas, and Mineral Interest Matters	4381
Instant Game Number 590 "Wild Winnings"	4372	Public Notice--Award of a Major Consulting Contract	4382
Texas Public Finance Authority			
Request for Proposals for Bond Counsel	4378		
Public Utility Commission of Texas			
Notice of Application for Amendment to Service Provider Certificate of Operating Authority	4378		

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line. <http://www.sos.state.tx.us/texreg>

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is <http://www.oag.state.tx.us>. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. <http://www.state.tx.us/Government>



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 ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0360-GA

Requestor:

The Honorable Ismael "Kino" Flores
Chair, Licensing and Administrative Procedures Committee
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Requestor:

Mr. Gordon E. Landreth, AIA, Chair
Texas Board of Architectural Examiners
Post Office Box 12337
Austin, Texas 78711-2337

Re: Whether a professional engineer may prepare all plans and specifications for a building without engaging the services of a licensed architect (Request No. 0360-GA)

Briefs requested by August 12, 2005

RQ-0361-GA

Request withdrawn by Requestor

RQ-0362-GA

Requestor:

The Honorable Mike Stafford
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

Re: Whether the payment required by section 51.961(g), Government Code, as amended, authorizing one-half of the family protection fee to be paid to the child abuse and neglect prevention trust account, violates art. 1, section 13, of the Texas Constitution, the open courts provision (RQ-0362-GA)

Briefs requested by August 18, 2005

RQ-0363-GA

Requestor:

The Honorable Harvey Hilderbran
Chair, Culture, Recreation and Tourism Committee
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Liability of members of the board of directors of the McCulloch Soil and Water Conservation District for the repair and maintenance of flood prevention structures (RQ-0363-GA)

Briefs requested by August 18, 2005

RQ-0364-GA

Requestor:

The Honorable Cheryl Swope Lieck
Chambers County Attorney
Post Office Box 1200
Anahuac, Texas 77514

Re: Authority of a county under the Public Funds Investment Act, chapter 2256, Government Code, to contract with a bank to invest and manage the permanent and available county school funds (RQ-0364-GA)

Briefs requested by August 18, 2005

RQ-0365-GA

Requestor:

The Honorable David K. Walker
Montgomery County Attorney
207 West Phillips
Conroe, Texas 77301

Re: Duty of a justice of the peace regarding a request by an organ procurement organization to obtain the organs of a decedent prior to the justice's determination of the necessity of an autopsy on the remains (RQ-0365-GA)

Briefs requested by August 19, 2005

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

TRD-200502935
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: July 19, 2005



Opinions

Opinion No. GA-0337

Mr. James Chastain, President
Bandera County River Authority and Groundwater District
Post Office Box 177
202 Twelfth Street
Bandera, Texas 78003

Re: Whether certain Bandera County River Authority and Groundwater District directors' interests constitute conflicts of interest under chapter 171 of the Local Government Code or other law (RQ-0307-GA)

S U M M A R Y

Chapter 171 of the Local Government Code does not disqualify individuals from serving on the Bandera County River Authority and Groundwater District board of directors because they have a substantial interest in a real estate, property development, or construction business. Rather, chapter 171 requires a director with a substantial interest in a business entity to file with the District's record keeper "an affidavit stating the nature and extent of the interest" before the governmental entity votes on or decides a matter involving the business entity and to abstain if "the action . . . will have a special economic effect on the business entity that is distinguishable from the effect on the public." Tex. Loc. Gov't Code Ann. §171.004(a)(1) (Vernon 1999). Thus, for each vote or decision the District board will make, each director must consider the nature of the specific proposed action and its potential effect on any business entity in which the director has a substantial interest to determine whether he or she must disclose the interest and abstain from participating in the matter. Under chapter 171, a director has a substantial interest in a business entity if the director or his or her close relative has a substantial interest in the business entity.

Section 49.052 of the Water Code disqualifies persons with certain interests from serving on certain water district boards. Whether section 49.052 applies to the Bandera County River Authority and Groundwater District involves questions of fact that cannot be resolved in an attorney general opinion.

Opinion No. GA-0338

The Honorable Ismael "Kino" Flores
Chair, Committee on Licensing and Administrative Procedures
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether Civil Practice and Remedies Code section 75.002, subsections (f) and (g) apply to the state, a county, or a municipality that owns, operates, or maintains its premises for bicycle-related recreational activities (RQ-0308-GA)

S U M M A R Y

Civil Practice and Remedies Code section 75.002, subsections (f) and (g) do not apply to the state, a county, or a municipality that owns, operates, or maintains its premises for only bicycle-related recreational activities.

Opinion No. GA-0339

The Honorable Frank Madla, Chair
Committee on Intergovernmental Relations
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re Whether the Live Oak Treaty of 1838 is still a binding agreement (RQ-0310-GA)

S U M M A R Y

An Indian treaty may be abrogated by subsequent legislation or treaty. The Lipan Indians executed four treaties after executing the 1838 Live Oak Treaty with the Republic of Texas. It is likely a federal court would find that the 1846 Council Springs Treaty between the Lipan Indians and the United States abrogated the 1838 Live Oak Treaty. We do not opine on the continued validity of subsequent treaties.

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

TRD-200502942
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: July 19, 2005



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 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES SUBCHAPTER H. RULES APPLICABLE TO A POLITICAL PARTY ACCEPTING CONTRIBUTIONS FROM CORPORATIONS OR LABOR ORGANIZATIONS

1 TAC §20.527

The Texas Ethics Commission proposes an amendment to §20.527.

A petition for rulemaking has been submitted to the Texas Ethics Commission requesting that the commission consider a rule requiring political parties that accept funds from corporations or labor organizations to file reports electronically.

The amendment to §20.527 would require the electronic filing of reports filed by political parties that accept contributions from corporations unless the political party qualifies for an exemption.

David A. Reisman, Executive Director, has determined that for each year of the first five years the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that this rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarification of the electronic filing requirement for political parties.

Mr. Reisman has also determined that there will be no direct adverse effect on small businesses or micro-businesses because this rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rules from any member of the public. A written statement should be mailed or delivered to David A. Reisman, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the

proposed rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The amendment to §20.527 is proposed under Government Code, Chapter 571, Section 571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §20.527 affects section 257.003 of the Election Code.

§20.527. *Form of Report.*

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

(c) Except as provided by Section 254.036(c), Election Code, each report filed with the commission under this subchapter and chapter 257 of the Election Code must be filed by computer diskette, modem, or other means of electronic transfer, using computer software provided by the commission or computer software that meets commission specifications for a standard file format.

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 July 18, 2005.

TRD-200502913

David Reisman

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 463-5800

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

1 TAC §§155.23, 155.29, 155.30, 155.55, 155.59

The State Office of Administrative Hearings (SOAH) proposes amendments to §155.23, concerning Filing Documents or Serving Documents on the Judge; §155.29, concerning Pleadings; §155.55, concerning Default Proceedings; and §155.59, concerning Proposal for Decision; and proposes new §155.30, concerning Motions. In general, the amendments and the new section are proposed to clarify procedures and deadlines and to make the rules easier to use.

The reasons for proposing the amendments are as follows: Section 155.23 is amended to clarify that documents filed by facsimile after 5:00 p.m. on a business day will be deemed to have

been filed on the next business day. The amendment makes the rule consistent with the provisions of §155.25(d)(4) (concerning Service of Documents on Parties). Section 155.29 is amended to apply only to pleadings and deletes provisions governing motions. New §155.30 is proposed to create a separate rule governing motions; the new section's provisions have been removed from §155.29 and the requirements for motions clarified. Section 155.55 is amended to clarify and simplify the mechanisms by which cases in which a respondent fails to appear or file a required answer may be handled. Current subsection (d) is deleted as substantially duplicative and unnecessary in light of the revision of current subsection (f) (subsection (e) in this revision). Section 155.59 is amended to establish rebuttable presumptions about dates of service of proposals for decision so that the judge and parties may better calculate the dates by which exceptions must be filed.

Cathleen Parsley, General Counsel, has determined that for the first five-year period the amended and new rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering them.

Ms. Parsley, also has determined that for the first five-year period the amended and new rules are in effect the public benefit anticipated as a result of the rules will be to ensure more efficient and fair procedures for participants in contested case hearings. There will be no effect on small businesses as a result of enforcing the amended and new rules. There is no anticipated economic cost to individuals who are required to comply with the proposed amendments and new rule.

Written comments must be submitted within 30 days after publication of the proposed amendments and new rule in the *Texas Register* to Debra Anderson, Paralegal, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, or by facsimile to (512) 463-1576.

The amended and new rules are proposed under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires adoption of procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the proposed amendments and new rule relate affect Government Code, Chapters 2001 and 2003.

§155.23. *Filing Documents or Serving Documents on the Judge.*

The following requirements govern the filing or service on the judge of documents in contested cases pending before SOAH unless modified by order of the judge.

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

(4) Facsimile Filings. Documents may be filed with SOAH, or in PUC or TCEQ cases served on the judge, by facsimile transmission according to the following requirements:

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

(E) The date imprinted by SOAH's facsimile machine on the transaction report that accompanies the document will determine the date of filing or of service on the judge. Documents received after 5:00 p.m. or on a Saturday, Sunday or other day on which SOAH is closed shall be deemed filed the first business day thereafter.

(5) (No change.)

§155.29. *Pleadings.*

(a) Content generally. Requests [All requests] for relief in a contested case may be submitted either orally as part of [not made on] the record at a prehearing conference or hearing; or [shall be] typewritten or printed on paper 8 1/2 inches wide and 11 inches long, and timely filed at SOAH. Photocopies are acceptable if[, provided all] copies are clear and legible. All pleadings shall contain or be accompanied by the following:

(1) - (8) (No change.)

(9) A certificate of conference, if required; ~~and~~

(10) The signature of the submitting party or the party's authorized representative; ~~and[-]~~

(11) A reference in the title of the pleading to a request for a hearing if the movant seeks a hearing.

(b) Amendment or supplementation of pleadings. A party may amend or supplement its pleadings by written filing. An amendment or supplementation that includes information, requests for relief, changes to the scope of the hearing, or other matters that unfairly surprise other parties may not be filed later than ten days before the date of the hearing, except by agreement of all parties and consent of the judge. The judge may establish other deadlines for filing amendments or supplementation of pleadings with notice to all parties. [Purpose and effect of motions. To change a setting or obtain a ruling, order, or any other procedural relief from the judge, a party is required to file a motion. Where the provisions of statute or rule do not automatically establish a needed procedure, the party seeking to amend or supplement the procedure should file a written motion. The mere filing or pendency of a motion, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule, or order, or any setting by SOAH or the judge.]

~~{(e) General requirements for motions. Except as provided in this section or chapter, for motions seeking to intervene or be granted party status, to amend a party's pleadings, for summary disposition, to file a motion to set aside a default or dismissal for failure to prosecute, or to continue a scheduled conference or hearing, all motions shall:}~~

~~{(1) be filed no later than seven days before the date of the hearing; except, for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at a hearing; and;}~~

~~{(2) if seeking an extension of an established deadline;}~~

~~{(A) include a proposed date; and}~~

~~{(B) indicate that the movant has contacted all parties and state whether there is opposition to the proposed date, or describe in detail the movant's attempts to contact the other parties.}~~

~~{(d) Responses to motions generally. Except as provided in this subsection or chapter, responses to motions described in subsection (e) of this section shall be in writing, and filed on the earlier of:}~~

~~{(1) five days after receipt of the motion; or}~~

~~{(2) the date and time of the hearing. However, responses to written motions late-filed (for good cause shown) on the date of the hearing may be presented orally at hearing.}~~

~~{(e) Motions to intervene. Motions for party status shall be filed no later than twenty days prior to the date the case is set for hearing. Responses to such motions shall be filed no later than seven days after the motion is served on or otherwise received by other parties.}~~

~~{(f) Motions for Continuance. Motions for continuance shall:}~~

{(1) make specific reference to all other motions for continuance previously filed in the case by the movant, and shall set forth the specific grounds upon which the party seeks the continuance;}

{(2) be filed no later than five days before the date of the hearing, except, for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at the hearing;}

{(3) indicate that the movant has contacted all parties and state whether there is opposition to the motion, or describe in detail the movant's attempts to contact the other parties;}

{(4) if seeking a continuance to a date certain, include a proposed date or dates (preferably a range of dates) and indicate whether the parties contacted agree on the proposed new date(s); and}

{(5) be served on the other parties according to applicable filing and service requirements, except that a motion for continuance filed five days or less before the date of the hearing shall be served by hand or facsimile delivery on the same date it is filed with SOAH, or by overnight delivery on the next day, unless the motion demonstrates or the record shows such service is impracticable.}

{(g) Responses to written motions for continuance. Responses to written motions for continuance shall be in writing, except responses to written motions for continuance filed on the date of the hearing may be presented orally at the hearing. Written responses to motions for continuance shall be filed on the earlier of:}

{(1) three days after receipt of the motion; or}

{(2) the date and time of the hearing.}

{(h) Amendment of Pleadings: A party may amend its pleadings by written filing if the amendment does not unfairly surprise other parties; provided that any pleading which substantially affects the scope of the hearing may not be filed later than seven days before the date the hearing actually commences, except by agreement of all parties and consent of the judge.}

{(i) Motions to reopen the record under §155.15(a)(4) of this title (relating to Powers and Duties of Judges), to set aside a default under §155.55(e) (relating to Failure to Attend Hearing and Default), to set aside a dismissal for failure to prosecute under §155.56(a) (relating to Dismissal Proceedings), and for summary disposition under §155.57 (relating to Summary Disposition), shall be governed by the referenced sections.}

§155.30. Motions.

(a) Purpose and effect of motions. To change a setting or obtain a ruling, order, or any other procedural relief from the judge, a party shall file a motion. The motion shall describe the relief sought and the basis in law upon which the relief is based. The mere filing or pendency of a motion, even if uncontested or agreed, does not alter or extend any time limit or deadline established by statute, rule, or order, or any setting by SOAH or the judge.

(b) General requirements for motions. Except as provided in this section or chapter, all motions shall:

(1) be filed no later than seven days before the date of the hearing; except, for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at a hearing; and,

(2) if seeking an extension of an established deadline,

(A) include a proposed date; and

(B) indicate that the movant has conferred with other parties and state whether there is opposition to the proposed date, or describe in detail the movant's attempts to confer with the other parties.

(c) Responses to motions generally. Except as provided in this subsection or chapter, responses to motions described in subsection (b) of this section shall be in writing, and filed on the earlier of:

(1) five days after receipt of the motion; or

(2) the date and time of the hearing. However, responses to written motions late-filed (for good cause shown) may be presented orally at hearing.

(d) Motions to intervene or for party status. Motions for party status shall be filed no later than twenty days prior to the date the case is set for hearing. Responses to such motions shall be filed no later than seven days after the motion is served on or otherwise received by other parties.

(e) Motions for Continuance. Motions for continuance shall:

(1) make specific reference to all other motions for continuance previously filed in the case by the movant, and shall set forth the specific grounds upon which the party seeks the continuance;

(2) be filed no later than five days before the date of the hearing, except, for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at the hearing;

(3) indicate that the movant has contacted the other parties and state whether there is opposition to the motion, or describe in detail the movant's attempts to contact the other parties;

(4) if seeking a continuance to a date certain, include a proposed date or dates (preferably a range of dates) and indicate whether the parties contacted agree on the proposed new date(s); and

(5) be served on the other parties according to applicable filing and service requirements, except that a motion for continuance filed five days or less before the date of the hearing shall be served by hand or facsimile delivery on the same date it is filed with SOAH, or by overnight delivery on the next day, unless the motion demonstrates or the record shows such service is impracticable.

(f) Responses to written motions for continuance. Responses to written motions for continuance shall be in writing, except responses to written motions for continuance filed on the date of the hearing may be presented orally at the hearing. Written responses to motions for continuance shall be filed on the earlier of:

(1) three days after receipt of the motion; or

(2) the date and time of the hearing.

(g) Motions to reopen the record under §155.15(a)(4) of this title (relating to Powers and Duties of Judges), to set aside a default under §155.55(e) of this title (relating to Failure to Attend Hearing and Default), to set aside a dismissal for failure to prosecute under §155.56(a) of this title (relating to Dismissal Proceedings), and for summary disposition under §155.57 of this title (relating to Summary Disposition), shall be governed by the referenced sections.

§155.55. Default Proceedings.

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

(d) No later than ten days after the hearing, if a dismissal, proposal for decision, or a final order has not been issued, a party may file a motion to set aside a default and reopen the record. The judge may grant the motion, set aside the default, and reopen the hearing for good

cause shown. [SOAH may enforce the procedural rule of any referring agency that provides either:]

~~{(1) that the failure of a respondent to timely enter an appearance or answer to the notice of hearing of the contested case shall entitle the agency's staff to a continuance at the time of the contested case hearing for such reasonable period of time as determined by the judge; or}~~

~~{(2) that the failure of respondent to appear at the time of hearing of the contested case shall entitle the agency's staff to move either for dismissal of the case from the SOAH docket, or to request issuance of a default proposal for decision or order by the judge.}~~

~~(e) Upon the failure of a respondent to appear at the hearing or to file a timely written response or answer required by the referring agency's rules, the judge may grant a continuance or dismissal from SOAH's docket in order to allow the referring agency to dispose of the case on a default basis under the referring agency's rules, or may issue a default proposal for decision or order. The judge has the discretion to determine whether proper and adequate notice under Tex. Gov't Code Ann. ch. 2001 and §155.27 of this title (relating to Notice of Hearing) was given, and whether return to the agency for informal disposition is appropriate. [No later than ten days after the hearing, if a dismissal, proposal for decision, or a final order has not been issued, a party may file a motion to set aside a default and reopen the record. The judge may grant the motion, set aside the default, and reopen the hearing for good cause shown.]~~

~~{(f) This section does not preclude the referring agency from informally disposing of a case by default under the agency's statute or rules, if the respondent fails to file a timely written response or other responsive pleading required by the referring agency's statute or rules. A party may request that the judge abate or continue the case pending informal disposition at the referring agency.}~~

§155.59. Proposal for Decision.

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

(c) The parties may submit to SOAH and the referring agency exceptions to the proposal for decision, and replies to exceptions to the proposal for decision.

(1) (No change.)

(2) If the proposal for decision was served by hand delivery, the date of service shall be presumed to be the date of delivery. If the proposal for decision was served by regular mail, interagency mail, certified mail, or registered mail, the date of service shall be presumed to be no later than three days after mailing. [The judge may, on the judge's own motion and for good cause, extend or shorten the time in which to file exceptions or replies.]

(3) The judge may, on the judge's own motion and for good cause, extend or shorten the time in which to file exceptions or replies. [The parties shall direct any motions for extension of time in which to file exceptions or replies to the judge. Parties' motions for extensions of time shall be filed no later than five days before the applicable deadline for submission of exceptions or replies and shall demonstrate either:]

~~{(A) good cause for the requested extension; or}~~

~~{(B) agreement of all other parties to the extension.}~~

(4) The parties [judge] shall direct any motions for extension of time in which to file [review all] exceptions and replies to the judge. Parties' motions for extensions of time shall be filed no later than five days before the applicable deadline for submission of exceptions or replies and shall demonstrate either: [and notify the referring

agency within 15 days of the deadline for filing a reply to the exceptions whether the judge recommends any changes to the proposal for decision.]

(A) good cause for the requested extension; or

(B) agreement of all other parties to the extension.

(d) The judge shall review all [may amend the proposal for decision in response to] exceptions and replies [to exceptions,] and notify the referring agency within 15 days of the deadline [may also correct any clerical errors in the proposal] for filing a reply to the exceptions whether the judge recommends any changes to [decision, without] the proposal for decision [again being served on the parties].

(e) The judge may amend the proposal for decision in response to exceptions and replies to exceptions, and may also correct any clerical errors in the proposal for decision, without the proposal for decision again being served on the parties.

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 July 15, 2005.

TRD-200502904

Cathleen Parsley

General Counsel

State Office of Administrative Hearings

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 475-4931



CHAPTER 157. TEMPORARY ADMINISTRATIVE LAW JUDGES

1 TAC §157.1

The State Office of Administrative Hearings (SOAH) proposes amendments to §157.1, concerning Temporary Administrative Law Judge, which will bring the section in line with SOAH's needs and the state bidding requirements.

The reasons for proposing the amendments are as follows: Section 157.1 is amended to require that persons seeking to serve as temporary administrative law judges have five years experience in administrative law. That experience may be the result of conducting hearings under the Administrative Procedure Act, practicing administrative law, or a combination thereof. The amendment also: (1) deletes as a component for consideration by the chief judge the recommendation of parties, and (2) requires those seeking to be temporary administrative law judges to comply with applicable state bidding requirements.

Cathleen Parsley, General Counsel, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parsley, also has determined that for the first five-year period the amended rule is in effect the public benefit anticipated as a result of the rule will be to ensure more efficient and fair procedures for participants in contested case hearings. There will be no effect on small businesses as a result of enforcing the amended rule. There is no anticipated economic cost to individuals who are required to comply with the proposed amendments.

Written comments must be submitted within 30 days after publication of the proposed amendments in the *Texas Register* to Debra Anderson, Paralegal, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, or by facsimile to (512) 463-1576.

The amended rule is proposed under Government Code, Chapter 2003, §2003.043, which authorizes the chief administrative law judge to contract with temporary administrative law judges; §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires adoption of procedural rules; and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the proposed amendments relate affect Government Code, Chapters 2001 and 2003.

§157.1. *Temporary Administrative Law Judges [Judge].*

(a) If judges employed by the State Office of Administrative Hearings [~~office~~] are not available to hear a case within a reasonable time, the chief judge may contract with qualified individuals to serve as temporary administrative law judges.

(b) To serve as a temporary administrative law judge, an individual must be licensed to practice law in the State of Texas and have five years experience in administrative law from [experience] conducting hearings under the Administrative Procedure Act and/or practicing administrative law [(APA)].

(c) The chief judge will also consider:

- (1) qualifications and experience; and
- (2) expertise related to the subject matter of the hearing. [~~and~~]
- ~~[(3) the recommendation of the parties.]~~

(d) To be considered for service [to serve] as a temporary administrative law judge, an individual must comply with any applicable state bidding requirements [should submit to the chief judge a letter indicating such interest along with a resume detailing the individual's experience in conducting APA hearings].

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 July 15, 2005.

TRD-200502905

Cathleen Parsley

General Counsel

State Office of Administrative Hearings

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 475-4931



CHAPTER 163. ARBITRATION PROCEDURES
FOR CERTAIN ENFORCEMENT ACTIONS OF
THE TEXAS DEPARTMENT OF AGING AND
DISABILITY SERVICES

**1 TAC §§163.1 - 163.7, 163.9, 163.11, 163.13, 163.15, 163.17,
163.19, 163.21, 163.25, 163.27, 163.29, 163.31, 163.33,**

**163.37, 163.39, 163.41, 163.59, 163.61, 163.65, 163.67,
163.69**

The State Office of Administrative Hearings (SOAH) proposes amendments to §163.1, concerning Definitions; §163.3, concerning Election of Arbitration; §163.5, concerning Initiation of Arbitration; §163.7, concerning Changes of Claim; §163.9, concerning Filing and Service of Documents; §163.11, concerning Selection of Arbitrator; §163.13, concerning Notice to and Acceptance by Arbitrator of Appointment; §163.15, concerning Disclosure Requirements and Challenge Procedure; §163.17, concerning Vacancies; §163.19, concerning Qualifications of Arbitrators; §163.21, concerning Costs of Arbitration; §163.25, concerning Electronic Record; §163.27, concerning Interpreters; §163.29, concerning Duties of the Arbitrator; §163.31, concerning Communication of Parties with Arbitrator; §163.33, concerning Date, Time, and Place of Hearing; §163.37, concerning Public Hearings and Confidential Material; §163.39, concerning Preliminary Conference; §163.41, concerning Exchange and Filing of Information; §163.59, concerning Attendance Required; §163.61, concerning Order; §163.65, concerning Clerical Error; and §163.67, concerning Appeal; and proposes new §163.2, concerning Construction of this Chapter; §163.4, concerning Notice of Election of Arbitration; §163.6, concerning Jurisdictional Challenges; and §163.69, concerning Other SOAH Rules of Procedure. In general, the rules have been modified to substitute job titles now in use under SOAH's new administrative structure, to delete unnecessary language, and to achieve parallel construction and consistency within this chapter and, as much as practicable, with Chapter 155 of this title (concerning Rules of Procedures) and Chapter 159 of this title (concerning Rules of Procedure for Administrative License Suspension Proceedings). In particular, references to SOAH have been substituted for references to the Office; the word Code has been substituted for Tex. Health and Safety Code Ann.; references to DADS (the Department of Aging and Disability Services) have been substituted for DHS and the department; numerals have been spelled out, in accordance with *Harvard Blue Book* form; statutory and rules citations have been updated and rewritten to comport with the style recommended in *Texas Rules of Form*. Numbers and letters contained in subsections have been changed to be consistent with the format used in Chapter 155. Additionally, numerous rules, including §163.3 and §163.5, have been amended to reflect changes in the law effected by Acts 1997, 75th Legislature, Chapter 693, §2; Acts 1997, 75th Legislature, Chapter 1159, §1.02; Acts 1999, 76th Legislature, Chapter 1094, §§1, 2, 3, and 4; and Acts 1999, 76th Legislature, Chapter 1095, §1.

Cathleen Parsley, General Counsel, has determined that for the first five-year period the amended and new rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering them.

Ms. Parsley, also has determined that for the first five-year period the amended and new rules are in effect the public benefit anticipated as a result of the rules will be to ensure more efficient and fair procedures for participants in arbitration proceedings. There will be no effect on small businesses as a result of enforcing the amended and new rules. There is no anticipated economic cost to individuals who are required to comply with the proposed amendments and new rules.

Written comments must be submitted within 30 days after publication of the proposed amendments and new rules in the *Texas*

Register to Debra Anderson, Paralegal, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, or by facsimile to (512) 463-1576.

The amendments and new rules are proposed under Health and Safety Code, Chapter 242, Subchapter H, §242.253, which requires that the State Office of Administrative Hearings adopt rules governing the appointment of an arbitrator and the process of arbitration under that chapter; under Government Code, Chapter 2001, §2001.004 which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires adoption of hearings procedural rules.

Code provisions to which these amendments and new rules relate are Health and Safety Code, Chapter 242; the Government Code, Chapter 2003; and the Human Resources Code, Chapter 32.

§163.1. Definitions.

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

(1) Administrative law judge or judge--An individual appointed by the chief administrative law judge of the State Office of Administrative Hearings ("SOAH") under Tex. Gov't Code Ann., Chapter 2003, §2003.041. The term shall also include any temporary administrative law judge appointed by the chief administrative law judge pursuant to Tex. Gov't Code Ann. §2003.043. [~~Authorized representative--An attorney authorized to practice law in the State of Texas or, where permitted by applicable law, a person designated by a party to represent the party.~~]

(2) Authorized representative--An attorney authorized to practice law in the State of Texas or, where permitted by applicable law, a person designated by a party to represent the party. [~~Chief judge--The chief administrative law judge of the State Office of Administrative Hearings (SOAH) or his designee.~~]

(3) Chief judge--The chief administrative law judge or his or her designee for action under this chapter. Any designee shall be a person qualified to serve as an arbitrator. [~~Department--The Texas Department of Human Services.~~]

(4) Code--Chapter 242 of the Tex. Health and Safety Code Ann. as it may be amended from time to time. [~~Facility--An institution which operates health care facilities as defined by the Health and Safety Code, §242.002(6).~~]

(5) DADS--The Texas Department of Aging and Disability Services, formerly the Texas Department of Human Services (DHS). [~~Director of hearings--The person who is responsible for the hearings department of the department.~~]

(6) Facility--An institution that operates health care institutions as defined by the Code §242.002(10), and 40 TAC §19.101(40) and (90).

(7) Director of hearings--The person who is responsible for the hearings section of DADS.

(8) Order--The award or final order issued by the arbitrator.

§163.2. Construction of this Chapter.

Unless otherwise expressly provided, the past, present, or future tense shall each include the other; the masculine, feminine, or neuter genders shall each include the other; and the singular and plural number shall each include the other.

§163.3. Opportunity to Elect Arbitration [Election of Arbitration].

(a) DADS or any affected facility may elect arbitration as an alternative to a contested case proceeding or to a judicial proceeding relating to the assessment of a civil penalty, pursuant to the Code, Subchapter J, in any of the following disputes, unless the United States Health Care Financing Administration requires that such dispute be resolved by the federal government: [The department or any affected facility may elect binding arbitration as an alternative in any of the following disputes unless the United States Health Care Financing Administration requires that such dispute be resolved by the federal government.]

(1) renewal of a license under Code §242.033;

(2) assessment of a civil penalty under Code §242.065;

(3) assessment of a monetary penalty under Code §242.066; or

(4) assessment of a penalty as described by Tex. Hum. Res. Code Ann., §32.021(n).

{(1) Disputes for which arbitration may be elected include:}

{(A) renewal of a license under Health and Safety Code, §242.033;}

{(B) suspension or revocation of a license under Health and Safety Code, §242.061;}

{(C) assessment of a civil penalty under Health and Safety Code, §242.065;}

{(D) assessment of a monetary penalty under Health and Safety Code, §242.066; or}

{(E) assessment of a penalty as described by Human Resources Code, §32.021(k).}

{(2) Arbitration cannot be elected if the subject matter of the dispute is part of the basis for:}

{(A) revocation, denial, or suspension of an institution's license;}

{(B) issuance of a closing order under Health and Safety Code, §242.062; or}

{(C) suspension of admissions under Health and Safety Code, §242.072.}

{(3) An affected facility may elect arbitration by filing a notice of election to arbitrate with the director of hearings no later than the tenth day after a notice of an administrative or judicial hearing relating to any of the above-listed disputes is received by the facility. A copy of this election shall be sent to the department's representative of record in the relevant action.}

{(4) The department may elect arbitration under this subchapter by filing the election with the director of hearings no later than the date that the facility may elect arbitration under paragraph (3) of this section. A copy of this election shall be sent to the facility's representative of record in the relevant action or to the owner or chief operating officer of the facility if no representative has made an appearance in the action.}

{(5) The date of receipt shall be the date affixed upon a notice of election by a date-stamp utilized by the hearings department of the department.}

{(6) The notice of election shall include a written statement that contains:}

~~{(A) the nature of the action that is being submitted to arbitration, as listed in paragraph (1) of this section;}~~

~~{(B) a brief description of the factual and/or legal controversy, including the amount in controversy, if any;}~~

~~{(C) an estimate of the length of the hearing and the extensiveness of the record necessary to determine the matter;}~~

~~{(D) the remedy sought;}~~

~~{(E) any special information that should be considered in compiling a panel of potential arbitrators; and}~~

~~{(F) the hearing locale requested, along with a explanation for that locale. If no request is made, the arbitrator may choose the locale in compliance with this chapter.}~~

~~{(G) the name, title, address, and telephone number of a designated contact person for the party who will be paying the costs of the arbitration.}~~

~~{(7) The election of arbitration is a representation that the party choosing arbitration is solvent and able to bear the costs of the proceeding.}~~

~~{(8) An election to engage in arbitration under this subchapter is irrevocable and binding on the facility and the department. However, such an election does not preclude the parties from reaching an agreed resolution of a dispute that has been submitted for arbitration at any time during the arbitration process before the final order has been issued by the arbitrator.}~~

(b) Arbitration may not be elected in the following circumstances if the subject matter of the dispute is part of the basis for:

(1) revocation, denial, or suspension of an institution's license pursuant to Code §242.061;

(2) issuance of an emergency suspension or closing order under Code §242.062;

(3) suspension of admissions under Code §242.072; or

(4) appointment of a trustee under Code §242.094 to resolve the legal issues involving the appointment of a trustee or conduct with respect to which the appointment of a trustee is sought.

(c) Arbitration may not be elected if the facility has had an arbitration order levied against it in the previous five years and the currently alleged violations occurred on or after September 1, 1999.

(1) The five year period begins on the date the arbitration order becomes final and ends on the fifth anniversary of the date upon which the arbitration order became final.

(2) This restriction does not apply to facilities that were parties in arbitrations that were resolved by settlement or dismissal before an order was issued.

(d) The election of arbitration is a representation that the party choosing arbitration is solvent and able to bear the costs of the proceeding. In cases where the facility is responsible for paying SOAH's costs and expenses, SOAH will require that an authorized representative of the facility provide an affidavit acknowledging the facility's responsibility and duty to pay SOAH's costs and expenses.

(e) An election to engage in arbitration under this chapter is irrevocable and binding on the facility and DADS. However, such an election does not preclude the parties from reaching an agreed resolution of a dispute that has been submitted for arbitration at any time during the arbitration process before the final order has been issued by the arbitrator.

§163.4. Notice of Election of Arbitration.

(a) Pursuant to Code §242.252, in an enforcement lawsuit filed in court:

(1) An affected facility may elect arbitration by filing a notice of election to arbitrate with the court in which the lawsuit is pending and sending copies to the office of the attorney general and to DADS's director of hearings.

(A) The notice of election must be filed no later than the tenth day after the date on which the answer is due or the date on which the answer is filed with the court, whichever is sooner.

(B) If a civil penalty is requested by an amended or supplemental pleading in a lawsuit filed pursuant to Code §242.094 (seeking appointment of a trustee to operate a home), the affected facility must file its notice of election of arbitration not later than the tenth business day after the date on which the amended or supplemental pleading is served upon the facility's representative of record in the proceeding, or, if none, upon the facility's owner or chief operating officer.

(C) If the election of arbitration is challenged, the parties shall seek a prompt ruling from the court on the challenge. If a court finds SOAH has jurisdiction to conduct an arbitration, DADS shall immediately file the court's order and the notice of election of arbitration at SOAH and request the arbitration be processed in the usual manner.

(2) DADS may elect arbitration by filing a notice of election with the court in which the lawsuit is pending and by notifying the facility of the election not later than the date the facility may elect arbitration under paragraph (1) of this subsection. A copy of this notice of election shall be sent to the facility's representative of record or to the owner or chief operating officer of the facility if no representative has made an appearance in the lawsuit.

(b) In an administrative enforcement proceeding originally docketed at SOAH:

(1) An affected facility may elect arbitration by filing a notice of election to arbitrate with the docket clerk at SOAH no later than the tenth day after receiving notice of hearing that complies with the requirements of the Administrative Procedure Act. A copy of this election shall be sent to DADS' representative of record in the relevant action and to DADS' director of hearings.

(2) DADS may elect arbitration under this chapter by filing a notice of election with the docket clerk at SOAH no later than the date that the facility may elect arbitration under subsection (a) of this section and sending a copy of the notice of election to the facility's representative of record in the relevant action, or to the owner or chief operating officer of the facility if no representative has made an appearance in the action.

(c) The date of filing shall be the date affixed upon a notice of election by a date-stamp utilized by the docket clerk at the court for judicial proceedings, or by the docket clerk of SOAH for administrative enforcement proceedings.

(d) The notice of election shall include a written statement that contains:

(1) the nature of the action that is being submitted to arbitration, as listed in §163.3(a) of this title (relating to Opportunity to Elect Arbitration);

(2) a brief description of the factual and/or legal controversy, including an estimate of the amount of any penalties sought;

(3) an estimate of the length of the hearing and the extensiveness of the record necessary to determine the matter;

(4) the remedy sought;

(5) a statement that the facility has not been the subject of an arbitration order within the previous five years as defined in this chapter;

(6) any special information that should be considered in compiling a panel of potential arbitrators;

(7) if a hearing locale other than Austin is requested, an explanation for requesting that locale; and

(8) the name, title, address, and telephone number of a designated contact person for the party who will be paying the costs of the arbitration.

§163.5. *Initiation of Arbitration.*

(a) When [immediately upon receipt of] a notice of election of arbitration is filed at SOAH, the notice [director of hearings] shall be date stamped and the file given a SOAH docket number [forward that election to the State Office of Administrative Hearings (SOAH) with a request] that identifies it as a case submitted for arbitration [be initiated]. Parties [The case] shall include this [be file stamped and given an SOAH] docket number [which identifies it as a case submitted for arbitration. The docket number will be used] on all subsequent correspondence and documents filed with SOAH relating to the [this] arbitration.

(b) The party that did not initiate the arbitration may [must] file an answering statement with SOAH within ten days after receipt of the notice of election from the electing party. That answering statement should [shall] include a response to [an indication of whether] the claim and any challenge to the [party agrees or disagrees with the statements in the initial notice of] election of arbitration. If the party that did not initiate the arbitration does not file an answering statement, SOAH will presume that party denies [no answering statement is filed, it will be treated as a denial of] the claim and does not challenge the election of arbitration. Failure to file an answering statement shall not operate to delay the arbitration.

~~[(c) Concurrent with sending a request to SOAH that the arbitration process be initiated, the department shall cause a motion to stay to be filed in any pending administrative or judicial enforcement actions listed in §163.3(1) of this title (relating to Election of Arbitration) until the arbitration process is completed.]~~

§163.6. *Jurisdictional Challenges.*

(a) Parties who raise jurisdictional challenges to an election for arbitration in a judicial enforcement action are required to seek an expeditious ruling from the court in which the election was filed.

(b) Jurisdictional challenges brought to an election for arbitration in an administrative enforcement proceeding shall be decided by the administrative law judge assigned to preside in the contested case.

§163.7. *Changes of Claim.*

If either party desires to make any new or different claim, it shall be made in writing and filed with SOAH. The other party may, within [shall have] ten days from the date of such filing, [mailing in which to] file an answer with SOAH. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

§163.9. *Filing and Service of Documents.*

(a) All documents a party files [filed by either party] with SOAH shall be simultaneously served on the other parties, using the same method of service, if possible. Documents required to be filed with SOAH shall be delivered to the docket clerk before 5:00 p.m.

~~[5:30 p.m.] local time. The time and date of filing shall be determined by the file stamp affixed by [the] SOAH [docket clerk].~~

(b) After the arbitrator has been appointed in a case, materials may be filed directly with the arbitrator [him/her], so long as the service requirements of this section are met.

(c) Service may be made by hand delivery, facsimile transmission (fax), overnight courier, or certified mail return receipt requested to the party or its representative at their last known address. All documents served on another party shall have a certificate of service signed by the party or its representative that certifies compliance with this rule. A proper certificate shall give rise to a presumption of service.

(d) If any document is sent to [the] SOAH [clerk] by certified mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail on or before the last day for filing same, and it is received within three days of the filing date, it shall be deemed properly filed.

~~(e) The date imprinted by SOAH's facsimile machine on the transaction report that accompanies the document will determine the date of filing or of service on the arbitrator. Documents [filed by fax that are] received [at SOAH] after 5:00 p.m. or on a Saturday, Sunday or other day on which SOAH is closed shall be deemed filed the first business day thereafter. [5:30 p.m. shall be deemed filed the first day following that is not a Saturday, Sunday, or official state holiday.]~~

§163.11. *Selection of Arbitrator.*

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

(c) If the parties do not agree on an arbitrator who [that] is willing and available to serve, SOAH will provide a list of potential arbitrators. The list of potential arbitrators in each case will be created by selecting individuals from the master list. In selecting these individuals, due regard will be given to the complexity of the dispute, the expertise needed to understand the dispute, the experience and training of the proposed arbitrators, and the requests of the parties concerning the location of the hearing. SOAH will also consider any potential conflicts revealed in disclosure statements on file with SOAH.

(d) SOAH shall send each party an identical list of five or six persons qualified to serve as an arbitrator in the dispute within ten days after the due date for SOAH's receipt of the answering statement [by SOAH], or as soon thereafter as practicable [in any event no later than 15 days after the initial claim is received by SOAH].

(e) Any objections for cause pertaining to any name on the list shall be made in writing directed to the chief judge at SOAH within three days, of receiving the list of potential arbitrators, with a copy served on all other parties. Such objections will be reviewed by the chief judge or his or her designee and acted upon within five days after the objection is received.

(f) Each party shall have ten days from the transmittal date to strike one name [two names]. The remaining names should be numbered in order of preference, if such preference exists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. It is not necessary for the parties to exchange the names [name] of the candidates [candidate that] they strike [are striking], nor will those names be disclosed to the candidates.

(g) SOAH will notify the parties of the [selected] arbitrator appointed.

~~(h) Until an arbitrator has been appointed, the chief Judge may rule on pending matters, including dispositive motions. [SOAH may contract with a nationally recognized association that performs arbitrations to conduct arbitrations under this chapter, after consultation with the department.]~~

(i) In cases where the facility is responsible for paying SOAH's costs and expenses, SOAH will require that an authorized representative of the facility provide an affidavit acknowledging the facility's responsibility and duty to pay SOAH's costs and expenses.

§163.13. Notice to and Acceptance [by Arbitrator] of Appointment by Arbitrator who is not a SOAH Judge.

(a) (No change.)

(b) The acceptance of the arbitrator shall state that the arbitrator [she/he] is qualified and willing to serve as arbitrator in accord with this chapter, and with the Code of Ethics for Arbitrators in Commercial Disputes issued by the American Bar Association and the American Arbitration Association in 1977. It shall also state that the arbitrator foresees no difficulty in completing the arbitration according to the schedule set out in this chapter.

§163.15. Disclosure Requirements and Challenge Procedure.

(a) Any person appointed to the master list of potential arbitrators shall file a disclosure statement with SOAH describing any circumstances likely to affect impartiality, including any bias, ~~or~~ any financial or personal interest in or representation of health care facilities or DADS ~~[the department]~~, or any past (within the last three years) or present relationship with a facility or with DADS ~~[the department]~~ or its employees. Arbitrators must update this [This] disclosure statement [must be updated] as circumstances change in order to maintain eligibility for appointment as an arbitrator under this chapter.

(b) A [In any particular matter, a] potential arbitrator must not accept appointment in [enter] or continue handling any matter in which the arbitrator [any dispute if she/he] believes or perceives that participation as an arbitrator would be a conflict of interest or create the impression of a conflict. When approached by SOAH about serving as an arbitrator in a particular matter, a [A] potential arbitrator must disclose any personal interest the arbitrator [she/he] may have in the result of the particular arbitration as well as any past or present relationship with the parties, their principals, or their representatives [when approached by SOAH, or parties in a dispute that could be submitted to arbitration under these rules, about being an arbitrator under these rules].

(c) (No change.)

(d) [Upon receipt of such information from the arbitrator or another source, SOAH shall communicate the information to the parties and, if appropriate, to the arbitrator and others.] Upon objection of a party to the continued service of an arbitrator, the chief judge shall provide the arbitrator and all parties an opportunity to respond. After consideration of these responses, the chief judge shall determine whether the arbitrator should be disqualified and shall inform the parties of his/her decision, which shall be conclusive.

§163.17. Vacancies.

If for any reason an arbitrator is unable to perform the duties of the office, the chief judge may, on proof satisfactory to the chief judge [him/her], declare the office vacant. The chief judge may fill a vacancy by appointing an individual from the remaining list of qualified arbitrators. Objections for cause to the appointed arbitrator shall be filed in accordance with §163.11(e) of this title (relating to Selection of Arbitrator). During the period of a vacancy, the chief judge may rule on pending matters, including dispositive motions. [Vacancies shall be filled in accordance with the applicable provisions of this chapter for initial appointment of an arbitrator.]

§163.19. Qualifications of Arbitrators.

The chief judge shall designate persons qualified to serve as an arbitrator under this chapter and that designation shall be conclusive. Potential arbitrators shall meet the following minimum standards:

(1) (No change.)

(2) Have a current resume on file with SOAH that shows the nature of the arbitrator's [his/her] law practice or other business, experience, and education, professional licenses and certifications, professional associations, publications, and other special qualifications such as other languages spoken. A separate disclosure statement containing information as described in §163.15(a) of this title (relating to Disclosure Requirements and Challenge Procedure) must also be on file with SOAH.

(3) (No change.)

(4) Completion of a training course offered under the joint auspices of DADS [the department], SOAH, representatives of the facilities, and of the community to be served by the facilities.

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

(5) Candidates selected for participation in the training program will be chosen based on resumes, letters of reference, and applications submitted to the chief judge.

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

(C) The number of persons chosen to participate in the training program and serve on the master list of arbitrators may be limited to enhance the opportunity to develop expertise, to ensure high quality results,~~[s]~~ and to maximize the efficiency of the program.

(6) SOAH ALJs may be certified by the chief judge as qualified to serve as arbitrators without necessity of their filing the reference letters referred to in paragraph (3) of this section or having completed the training course described in paragraph (4) of this section. Any ALJs so designated will receive individualized training in the topics described in paragraph (4) of this section. However, any SOAH ALJ who has heard DADS nursing home administrative enforcement contested cases may be certified by the chief judge as qualified to serve as an arbitrator provided the ALJ receives training in the arbitration rules set forth in this chapter.

(7) In order to be eligible to serve as an arbitrator, a person may not have represented any client in any matter pending before SOAH during the six-month period preceding the appointment, may not represent anyone before SOAH during the pendency of the contract to serve as an arbitrator for SOAH, and may not represent anyone before SOAH for six months following the conclusion of his/her contract to serve as an arbitrator for SOAH.

(8) In order to be eligible to serve as an arbitrator, a person may not represent any plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies, and he/she must affirm that he/she will not undertake any such representation during the pendency of the contract to serve as an arbitrator for SOAH [the Office].

(9) (No change.)

§163.21. Costs of Arbitration.

(a) An arbitrator's fees and expenses shall not exceed \$500 per day for case preparation, pre-hearing conferences, hearings, preparation of the order [award], and any other required post-hearing work. Rates charged for less than one day must bear a reasonable relationship to the daily maximum.

(b) There may also be incidental expenses connected with an arbitration proceeding which may be charged in addition to the arbitrator's fees and expenses [upon agreement by the parties]. If the a party requests that an arbitration hearing be held outside of Austin, and the arbitrator agrees to hold the arbitration in that location, incidental [Examples of such] expenses would include the cost of renting a room for the hearing and the arbitrator's travel expenses.

(c) In cases where arbitration is elected for actions occurring after January 1, 1998, the party that elects arbitration shall pay the cost of the arbitration. ~~[Payment of the costs of the arbitration must be current before the arbitrator's order is issued.]~~

§163.25. Electronic Record.

DADS [The department] shall make an electronic recording of the proceeding. If there is no stenographic record of the proceeding, the original recording or a copy will be provided to the arbitrator at the close of the proceeding if the arbitrator so requests. At the arbitrator's request, DADS [the department] shall also record the prehearing conferences.

§163.27. Interpreters.

When an interpreter will be needed for all or part of a proceeding, a party shall file a written request at least seven days before the setting. SOAH shall provide and pay for: [Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.]

(1) an interpreter for deaf or hearing impaired parties and subpoenaed witnesses in accordance with §2001.055 of the APA;

(2) reader services or other communication services for blind and sight impaired parties and witnesses; and

(3) a certified language interpreter for parties and witnesses who need that service.

§163.29. Duties of the Arbitrator.

The arbitrator shall:

(1) (No change.)

(2) protect the interests of DADS [the department] and the facility;

(3) ensure that all relevant evidence has been disclosed to the arbitrator, DADS [department], and facility; and

(4) render an order consistent with applicable state and federal law, including the [Health and Safety] Code[; Chapter 242]; Tex. Hum. Res. Code Ann., [the Human Resources Code,] Chapter 32; and this chapter.

§163.31. Communication of Parties with Arbitrator.

(a) DADS [The department] and the facility shall not communicate with the arbitrator other than at an oral hearing, or through properly filed documents, unless the parties and the arbitrator agree otherwise.

(b) (No change.)

§163.33. Date, Time, and Place of Hearing.

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

(c) The arbitrator may grant a continuance of the arbitration at the request of DADS [the department] or the facility. The arbitrator may not unreasonably deny a request for a continuance.

(d) Arbitration [AH] hearings normally will [shall] be held at SOAH's hearings facility in Austin, Texas. If a party seeks to have the arbitration hearing held elsewhere, the party shall submit a written request to the arbitrator and make a showing of good cause. The arbitrator shall have sole discretion to determine whether to grant such a request. If the arbitrator grants the request, the arbitrator shall determine how the incidental costs of holding the arbitration hearing outside of Austin will be apportioned between the parties. Incidental expenses include the cost of renting a room for the hearing and the arbitrator's travel expenses [or in the region the facility is located in as determined by the arbitrator]. Preference will be given to using state [government] facilities. The arbitrator may require that the incidental expenses be paid in advance of the arbitration hearing.

§163.37. Public Hearings and Confidential Material.

Hearings held under this chapter shall be open to the public. The parties are responsible for identifying any material that is confidential by law and for taking appropriate measures to ensure that such material remains confidential during the hearing. All exhibits shall be returned to DADS [the department] following the issuance of the order by the arbitrator, where they shall be maintained in accordance with DADS' [the department's] rules.

§163.39. Preliminary Conference.

The arbitrator may set a preliminary conference and may require parties to file a statement of position prior to that conference. The statement of position shall include:

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

(6) the identification of witnesses expected to be called during the arbitration proceeding, with a short summary of their expected testimony; and

(7) (No change.)

§163.41. Exchange and Filing of Information.

(a) Unless the arbitrator orders otherwise, by [By] the 30th day after the date SOAH mailed notice to the parties of the name of the appointed arbitrator, the parties shall have exchanged the following information: [-]

(1) List of witnesses that a party expects to call with a short summary of their expected testimony.

(2) Any and all documents or other tangible things that contain information relevant to the subject matter, including any documents that will be testified about at the hearing or that witnesses have reviewed in preparing for their testimony.

(b) [(-)] Not later than the seventh day before the first day of the arbitration hearing, and sooner if so directed by the arbitrator, DADS [the department] and the facility shall exchange and file with the arbitrator:

(1) [(-A)] all documentary evidence not previously exchanged and filed that is relevant to the dispute, with the relevant portions clearly indicated; and

(2) [(-B)] information relating to a proposed resolution of the dispute.

(c) The parties are responsible for identifying any material that is confidential by law and for taking appropriate measures, for example, redacting resident identities, to ensure that all such material remains confidential.

(d) Each producing party's documents shall be labeled by name or initials of the party and Bates-stamped or otherwise consecutively numbered in the lower right-hand corner of each page.

§163.59. Attendance Required.

(a) (No change.)

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before making an order [award].

§163.61. Order.

(a) The arbitrator may enter any order that may be entered by DADS [the department,] board, commissioner, or court in relation to a dispute described in §163.3 of this title (relating to Opportunity to Elect [Election of Arbitration]).

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

(d) The order must:

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

(3) include a list of DADS [the department] and the facility's stipulations on uncontested issues and a statement of the arbitrator's decisions on all contested issues. If requested by either of the parties, the decision shall contain findings of fact and conclusions of law on controverted issues.

(e) (No change.)

§163.65. Clerical Error.

For the purpose of correcting clerical errors, an arbitrator retains jurisdiction of the order [award] for 20 days after the date of the order [award].

§163.67. Appeal.

(a) In arbitrations where DADS [the department] has elected arbitration, the facility may appeal to district court as provided by [Health and Safety] Code, §242.267.

(b) In arbitrations where the facility elected [requested] the arbitration, DADS [the department] may appeal to district court as provided by [Health and Safety] Code, §242.267.

§163.69. Other SOAH Rules of Procedure.

Unless specific applicable procedures are set out in this chapter, other SOAH rules of procedure found at Chapters 155, 157, and 161 of this title (relating to Rules of Procedure, Temporary Administrative Law Judges, and Requests for Records) may apply in arbitration proceedings under this chapter. Under this title, the rules of procedure that apply to this chapter are limited to the following sections: §155.15 (relating to Powers and Duties of Judges); §155.17 (relating to Assignment of Judges to Cases); §155.21 (relating to Representation of Parties); §155.39 (relating to Stipulations); §155.41 (relating to Procedure at Hearing); §155.49 (relating to Conduct and Decorum); §155.56 (relating to Dismissal Proceedings); §155.45 (relating to Participation by Telephone or Videoconferencing); §157.1 (relating to Temporary Administrative Law Judges); and §161.1 (relating to Charges for Copies of Public Records).

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 July 15, 2005.

TRD-200502906

Cathleen Parsley

General Counsel

State Office of Administrative Hearings

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 475-4931



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 2. MEDICAID VISION CARE PROGRAM

1 TAC §§354.1015, 354.1021, 354.1023

The Health and Human Services Commission (HHSC) proposes amendments to §354.1015, Benefits and Limitations; §354.1021, Additional Claims Information Requirements; and §354.1023, Optometric Services Provider.

Background and Justification

The proposed amendments to §354.1015, Benefits and Limitations, §354.1021, Additional Claims Information Requirements, and §354.1023, Optometric Services Provider, revise the language for the vision care services available to Medicaid recipients 21 years and older. Consistent with the amounts appropriated to the Texas Medicaid Program, the amendment is necessary to expand the vision care benefits available to adult Medicaid recipients.

Section-by-Section Summary

Rule 354.1015, Benefits and Limitations, describes the benefits and limitations for vision care services. The amendments to the rule add language to describe the expanded vision care benefits available to adult recipients age 21 years and older. These benefits include prosthetic and non-prosthetic eyewear, repairs for prosthetic lenses, and the replacement criteria for eyewear.

Rule 354.1021, Additional Claims Information Requirements, details the information that is necessary to process claims for providers of vision care services. The rule is amended to add language describing additional requirements for information that is necessary to process claims appropriately. In addition, the references to the Texas Administrative Code are updated within the rule.

The details regarding who may deliver vision care captured in §354.1023, Optometric Services Provider, defines an optometric service provider and details who may be reimbursed for vision care services through the medical assistance program. The rule also describes the Medicaid requirements for optometric service providers. The amendments to the rule add language to include vision services beyond the examination.

Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five years that the proposed rules are in effect there will be cost to the state as follows: The estimated fiscal impact to general revenue in state fiscal years 2006-2010 is \$2.6 million, \$2.9 million, \$3.2 million, \$3.5 million, and \$3.9 million, respectively. The estimated all funds fiscal impact in state fiscal year 2006-2010 is \$6.8 million, \$7.5 million, \$8.3 million, \$9.1 million, and \$10.0 million, respectively. The proposed rules would allow local or county providers to receive allowable Medicaid payments for the provision of eligible services to qualified Medicaid clients. The proposed rules will not result in any fiscal implications for local health and human service agencies. Local governments will not incur additional costs.

Small and Micro-Business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, as they will not be required to alter their business practices as a result of this rule. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Public Benefit

David Balland, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the amendment. The anticipated public benefit, as a result of enforcing the proposed rules, will be to expand the vision care benefits to Medicaid recipients over the age of 21 years.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "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

HHSC has determined that this 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 §2007.043, Government Code.

Public Comment

Written comments on the proposal may be submitted to Marianna Zolondek, Texas Health and Human Services Commission, Medicaid/CHIP Division, H-600, 11209 Metric Boulevard, Building H, Austin, Texas 78758, by fax to (512) 491-1953, within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for August 4, 2005, at 1:00 p.m. at the Health and Human Services Commission, 4900 North Lamar Blvd., Room 1420, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Carmen Capetillo at (512) 491-1104.

To comply with federal regulations, a copy of the proposal is being sent to each Texas Department of Aging and Disability Services (DADS) office where it will be available for public review upon request.

Statutory Authority

The amendments are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021; and, the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect the Human Resources Code, Chapter 32 and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1015. *Benefits and Limitations.*

(a) Except as specified in §354.1023, Optometric Services Provider [of this title (relating to Optometrist Services)], the services addressed in this subchapter are those optometric services available to Medicaid recipients who are 21 years old or older. Services are available to Medicaid recipients under 21 years old through the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, Benefits and Limitations, described in 1 T.A.C. §363.502.

(b) The amount, duration, and scope of optometric services available through the Texas Medicaid [Medical Assistance] Program are established according to applicable federal regulations, the Texas state plan for medical assistance under Title XIX of the Social Security Act, state law, and Commission [department] rules. Information regarding benefits and limitations is available to providers of these services through the Texas Medicaid Provider Procedures Manual [which is] issued to each provider upon enrollment [en enrolling] in the Texas Medicaid Program.

(c) The benefits and limitations applicable to optometric services available through the Texas Medicaid Program to eligible [Medicaid] recipients who are 21 years old or older are as follows: [-]

(1) Provider eligibility. A provider must be a physician or optometrist and enrolled in the Texas Medicaid Program at the time the service is provided in order to be eligible for reimbursement by the program. [All services reimbursable by the program must be provided to eligible recipients by a physician or optometrist enrolled in the Medicaid program at the time the service(s) is provided.]

(2) Reimbursable services.

(A) Examination. One examination of the eyes by refraction may be provided to each eligible recipient every 24 months.

(B) Prosthetic eyewear. Prosthetic eyewear, including contact lenses and glass or plastic lenses in frames, is a program benefit provided to an eligible recipient if the eyewear is prescribed for post-cataract surgery, congenital absence of the eye lens, or loss of an eye lens because of trauma. The following benefits and limitations apply to prosthetic eyewear:

(i) Medically necessary temporary lenses are reimbursed during post-surgical cataract convalescence. The convalescence period is considered to be the four-month period following the date of cataract surgery.

(ii) Only one pair of permanent prosthetic lenses may be dispensed as a program benefit.

(iii) Replacement of prosthetic eyewear is reimbursed when the eyewear is lost, stolen, or damaged beyond repair.

(iv) Prosthetic eyewear is reimbursed when the eyewear is required due to a change in visual acuity of .5 diopters or more.

(v) Repairs to prosthetic eyewear are reimbursable if the cost of materials exceeds \$2.00. Repairs costing less than \$2.00 are not reimbursable and the provider may not bill the recipient for these services.

(C) Non-prosthetic eyewear. Non-prosthetic eyewear includes contact lenses and glass or plastic lenses in frames. Non-prosthetic eyewear is a program benefit when the eyewear is medically necessary to correct defects in vision. This eyewear is provided to an eligible recipient only once every 24 months unless the recipient experiences a visual acuity change of .5 diopters or more. A new 24-month benefit period for eyewear begins with the replacement of non-prosthetic eyewear due to a change in visual acuity of .5 diopters or more.

(i) Contact lenses require prior authorization by the Commission or its designee. Prior authorization decisions are based on the provider's written documentation supporting the need for contact lenses as the only means of correcting the vision defect.

(ii) Non-prosthetic eyewear that is lost or stolen is not reimbursed by the program.

(iii) Repairs to non-prosthetic eyewear are not reimbursable by the Texas Medicaid Program.

§354.1021. *Additional Claims Information Requirements.*

Providers must meet the claim criteria established in the provisions of this subchapter for optometric services and the provisions for participation in the Medicaid program established under Division 1, [Subchapter A of this chapter (relating to) Medicaid Procedures for Providers, [)] and Division 11, [Subchapter L of this chapter (relating to) General Administration, [)] of Subchapter A, Purchased Health Services [the purchased health services chapter]. Besides the claims information requirements established in §354.1001, Claim Information Requirements, of this chapter [title (relating to Claim Information Requirements)], the following information is required for claims for vision care services:

- (1) Name [name], address, and Medicaid provider identification number of the ordering provider, as appropriate;[-]
- (2) Description of lenses and frames provided;
- (3) Provider's signature on the claim form of the physician or supplier, including degrees or credentials, verifying the diopter change required for the dispensing of replacement eyewear;
- (4) Claims for eyewear with special features must be accompanied by a signed form by the recipient that acknowledges his selection of eyewear that is beyond the specifications for eyewear in §354.1017, Specifications for Eyewear. A signed patient certification satisfies this requirement for claims that are electronically submitted;
- (5) If the claim is for replacement of prosthetic eyewear that was lost, stolen, or damaged beyond repair, the recipient must sign the claim form or, in the case of providers who electronically bill, a patient certification.
- (6) If the claim is for vision care services provided to a Medicaid recipient residing in a skilled nursing facility or an intermediate care facility, the claim must indicate the name of the physician who ordered the services and the name of the facility where the recipient resides as the place of service.

§354.1023. *Optometric Services Provider.*

(a) Optometric services are defined as vision care services provided by a physician or optometrist. In addition to those services described in §354.1015 and §363.502 of this title (both relating to Benefits and Limitations), and subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission (Commission) or its designee, diagnostic and treatment services provided by an optometrist or physician are covered by the Texas Medicaid [Medical Assistance] Program.

(b) To be covered, the evaluation, diagnostic, and treatment services shall be:

- (1) Within [within] the optometrist's or physician's scope of practice, as defined by state law;
- (2) Reasonable [reasonable] and medically necessary as determined by the Commission or its designee; and
- (3) Provided [provided] to an eligible recipient by an optometrist or physician enrolled in the Texas Medicaid [Medical Assistance] Program at the time the service(s) are provided.

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 July 18, 2005.
TRD-200502908

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 28, 2005
For further information, please call: (512) 424-6900

◆ ◆ ◆
DIVISION 4. MEDICAID CHIROPRACTIC SERVICES

1 TAC §354.1052

The Health and Human Services Commission (HHSC) proposes an amendment to §354.1052, Authorized Chiropractic Services.

Background and Justification

The proposed amendment removes the language that limits the provision of services provided by a doctor of chiropractic to Medicaid recipients under the age of 21 years and eligible for the Early and Periodic Screening, Diagnostic, and Treatment program. Consistent with the amounts appropriated to the Texas Medicaid Program, the amendment is necessary to make the benefit available to adult Medicaid recipients.

Section-by-Section Summary

Rule 354.1052, Authorized Chiropractic Services, details who may deliver chiropractic services and receive reimbursement for those services through the medical assistance program. In addition, the rule describes the chiropractic service benefits reimbursed through Medicaid.

Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five years that the proposed rule is in effect there will be cost to the state as follows: The estimated fiscal impact to general revenue in state fiscal years 2006-2007 is \$0.4 million, \$0.5 million in state fiscal years 2008-2009, and \$0.6 million in state fiscal year 2010. The estimated all funds in state fiscal year 2006-2010 is \$1.0 million, \$1.1 million, \$1.2 million, \$1.4 million, and \$1.5 million, respectively. The proposed rule would allow local or county providers to receive allowable Medicaid payments for the provision of eligible services to qualified Medicaid clients. Local governments will not incur additional costs.

Small and Micro-Business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, as they will not be required to alter their business practices as a result of this rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

David Bolland, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the amendment. The anticipated public benefit, as a result of enforcing the proposed rule, will be extending the benefit of chiropractic services to Medicaid recipients age 21 years and older.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule," as defined by §2001.0225 of the Texas Government

Code. "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

HHSC has determined that this 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 §2007.043, Government Code.

Public Comment

Written comments on the proposal may be submitted to Marianna Zolondek, Texas Health and Human Services Commission, Medicaid/CHIP Division, H-600, 11209 Metric Boulevard, Building H, Austin, Texas 78758, by fax to (512) 491-1953, within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for August 4, 2005, at 1:00 p.m. at the Health and Human Services Commission, 4900 North Lamar Blvd., Room 1420, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Carmen Capetillo at (512) 491-1104.

To comply with federal regulations, a copy of the proposal is being sent to each Department of Aging and Disability Services office where it will be available for public review upon request.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021; and, the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32 and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1052. Authorized Chiropractic Services.

(a) Chiropractic services include those services provided by a doctor of chiropractic and which are within the scope of practice of his profession as defined by state law. Benefits are limited to services which consist of necessary treatment or correction by means of manual manipulation of the spine, by use of hands only, to correct a subluxation to the same extent that such benefits are provided under Part B of Medicare. Benefits are available under this section only for services which are provided during the first 12 visits to any one eligible recipient by a doctor of chiropractic during any one benefit period. Benefit period for purposes of this section means a 12 consecutive month period which begins with the month of the first treatment.

(b) Coverage does not extend to the diagnostic, therapeutic services, or adjunctive therapies furnished by a chiropractor or by others under his or her orders or direction. This exclusion applies to the x-ray taken for the purpose of determining the existence of a subluxation of the spine. Additionally, braces or supports, even though ordered by an MD or DO and supplied by a chiropractor, are not reimbursable items.

{(e) Chiropractor services are limited to Medicaid recipients eligible for the Early and Periodic Screening, Diagnosis, and Treatment program under 25 T.A.C. Chapter 33.}

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 July 18, 2005.

TRD-200502909

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-6900



DIVISION 8. PODIATRY SERVICES

1 TAC §354.1102

The Health and Human Services Commission (HHSC) proposes an amendment to §354.1102, Authorized Podiatry Services.

Background and Justification

The proposed amendment removes the language that limits the provision of services provided by a physician or surgeon specializing in podiatric medicine to Medicaid recipients under the age of 21 years and eligible for the Early and Periodic Screening, Diagnostic, and Treatment program. Consistent with the amounts appropriated to the Texas Medicaid Program, the amendment is necessary to make podiatry services available to adult Medicaid recipients when the service is provided by a podiatrist.

Section-by-Section Summary

Rule 354.1102, Authorized Podiatric Services, details who may deliver podiatry services and receive reimbursement for those services through the medical assistance program. In addition, the rule describes the podiatry service benefits reimbursed through Medicaid.

Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five years that the proposed rule is in effect there will be cost to the state as follows: The estimated fiscal impact to general revenue in state fiscal year 2006-2010 is \$2.0 million, \$2.2 million, \$2.4 million, \$2.6 million, and \$2.9 million, respectively. The estimated all funds in state fiscal year 2006-2010 is \$5.1 million, \$5.7 million, \$6.2 million, \$6.9 million, and \$7.6 million, respectively. The proposed rule would allow local or county providers to receive allowable Medicaid payments for the provision of eligible services to qualified Medicaid clients. The proposed rule will not result in any fiscal implications for local health and human service agencies. Local governments will not incur additional costs.

Small and Micro-Business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, as they will not be required to alter their business practices as a result of this rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

David Balland, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the amendment. The anticipated public benefit, as a result of enforcing the proposed rule, will be extending the benefit of podiatry services to Medicaid recipients over the age of 21 years.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "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

HHSC has determined that this 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 §2007.043, Government Code.

Public Comment

Written comments on the proposal may be submitted to Marianna Zolondek, Texas Health and Human Services Commission, Medicaid/CHIP Division, H-600, 11209 Metric Boulevard, Building H, Austin, Texas 78758, by fax to (512) 491-1953, within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for August 4, 2005, at 1:00 p.m. at the Health and Human Services Commission, 4900 North Lamar Blvd., Room 1420, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Carmen Capetillo at (512) 491-1104.

To comply with federal regulations, a copy of the proposal is being sent to each Texas Department of Aging and Disability Services (DADS) office where it will be available for public review upon request.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021; and, the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32 and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1102. Authorized Podiatry Services.

[(a)] The term "podiatry services" includes those services provided by or under the personal supervision of a doctor of podiatry which are within the scope of practice of his profession as defined by state law and for which benefits are or would have been provided under Medicare had the recipient been eligible for Medicare.

[(b) Reimbursement for Podiatry services are limited to Medicaid recipients eligible for the Early and Periodic Screening, Diagnosis, and Treatment program under 25 TAC Chapter 33.]

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 July 18, 2005.

TRD-200502910

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-6900



DIVISION 15. HEARING AID SERVICES

1 TAC §§354.1231, 354.1233, 354.1235

The Health and Human Services Commission (HHSC) proposes amendments to Hearing Aid Services, specifically, §354.1231, Benefits and Limitations; §354.1233, Requirements for Hearing Aid Services, and §354.1235, Requirements for Provider Participation.

Background and Justification

The proposed amendments to §354.1231, Benefits and Limitations, §354.1233, Requirements for Hearing Aid Services, and §354.1235, Requirements for Provider Participation, revise the language for the hearing aid services available to Medicaid recipients age 21 years and older. Consistent with the amounts appropriated to the Texas Medicaid program, the amendments are necessary to expand hearing aid benefits available to adult Medicaid recipients.

Section-by-Section Summary

Rule 354.1231, Benefits and Limitations, describes the benefits and limitations for hearing aid services. The amendments to the rule add language to describe the expanded hearing aid benefits available to Medicaid recipients age 21 years and older. The rule revisions include dispensing and fitting of hearing aids, a description of the benefits and limitations with regard to hearing aid services, and criteria for the service.

Rule 354.1233, Requirements for Hearing Aid Services, outlines the requirements for hearing aid services. The rule defines who will be reimbursed for delivering hearing aid services and lists criteria for hearing aid services. The rule revisions include adding language to define the criteria for hearing evaluation, hearing aids, warranty, packaging, and post-fitting and hearing aid follow up visits.

The requirements for hearing aid service providers are detailed in §354.1235, Requirements for Provider Participation. The rule was amended to include hearing aid fitters and dispensers and related services. In addition, new language was added listing the criteria for participation in the Texas Medicaid program for hearing aid fitters and dispensers.

Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five years that the proposed rules are in effect there will be cost to the state as follows: The estimated fiscal impact to general revenue in state fiscal year 2006-2010 is \$0.6 million, \$0.6 million, \$0.7 million, \$0.8 million, and \$0.8 million, respectively. The estimated all funds fiscal impact in state fiscal year 2006-2010 is \$1.5 million, \$1.6 million, \$1.8

million, \$2.0 million, and \$2.2 million, respectively. The proposed rules would allow local or county providers to receive allowable Medicaid payments for the provision of eligible services to qualified Medicaid clients. The proposed rules will not result in any fiscal implications for local health and human service agencies. Local governments will not incur additional costs.

Small and Micro-Business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, as they will not be required to alter their business practices as a result of this rule. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Public Benefit

David Balland, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the amendment. The anticipated public benefit, as a result of enforcing the proposed rules, will be extending the benefit of hearing aid services to Medicaid recipients age 21 years and older.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "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

HHSC has determined that this 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 §2007.043, Government Code.

Public Comment

Written comments on the proposal may be submitted to Marianna Zolondek, Texas Health and Human Services Commission, Medicaid/CHIP Division, H-600, 11209 Metric Boulevard, Building H, Austin, Texas 78758, Austin, Texas 78756, by fax to (512) 491-1953, within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for August 4, 2005, at 1:00 p.m. at the Health and Human Services Commission, 4900 North Lamar Blvd., Room 1420, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Carmen Capetillo at (512) 491-1104.

To comply with federal regulations, a copy of the proposal is being sent to each Department of Aging and Disability Services office where it will be available for public review upon request.

Statutory Authority

The amendments are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021; and, the Texas Government Code, §531.021(a), which

provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect the Human Resources Code, Chapter 32 and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1231. *Benefits and Limitations.*

(a) Benefits. Reimbursement for hearing aid services available through the Texas Medical Assistance (Medicaid) Program shall be provided in accordance with federal regulations found at 42 CFR Subchapter C, Medical Assistance Programs[; ~~state-legislated appropriations;~~] and the provisions and procedures found elsewhere in this chapter as cited at §354.1233, [~~of this title (relating to) Requirements for Hearing Aid Services~~]. The following hearing aid services shall be reimbursed, through the Texas Medicaid Program:

- (1) Physician [~~physician~~] examination to determine the medical necessity for a hearing aid;
- (2) Hearing [~~hearing~~] aid evaluations, including home visit hearing evaluations;
- (3) Hearing aid;
- (4) Initial fitting, dispensing, and post-fitting check of the hearing aid; and
- (5) First and second revisits to assess the recipient's adaptation to the hearing aid and the functioning of the instrument.

(b) Limitations and exclusions. Hearing aid providers, audiologists, and examining physicians must comply with the following conditions and limitations established by the department or its designee.

- (1) Hearing aid services are available to persons who are 21 years of age and older and eligible for Medicaid services.
- (2) An individual using a hearing aid before becoming eligible for Medicaid benefits may have a hearing evaluation conducted by an approved hearing aid services provider after becoming eligible for Medicaid. Medicaid reimbursement for a new hearing aid shall be denied if the provider concludes, based upon the evaluation findings, that the recipient's present hearing aid adequately compensates for the degree of hearing loss.

(3) Providers may not submit a hearing evaluation claim to the Commission or its designee unless the Medicaid recipient meets the eligibility criteria in §354.1233, [~~of this title (relating to) Requirements for Hearing Aid Services~~].

(4) The Texas Medicaid program [~~Commission or its designee~~] shall not pay for the replacement of batteries or cords.

(5) Recipients may receive home visit hearing evaluations and hearing aid fittings only on the written recommendation of a physician.

(6) Recipients are limited to one hearing aid every six years (72 months) from the dispensing month of the present instrument.

(7) Binaural fittings are not reimbursed except for legally blind, hearing-impaired recipients who provide documentation that they do not have any other available resources.

(8) Hearing aid providers shall dispense United States manufactured hearing aids if the purchase price and quality are comparable to those of foreign manufacturers.

(9) Hearing aid services do not include auditory training, speech, reading, or other types of habitative or rehabilitative services.

(10) Hearing aids are limited to eligible recipients whose air conduction puretone average in the better ear is 45dB or greater.

§354.1233. Requirements for Hearing Aid Services.

(a) Hearing aid services. Providers of hearing aid services must comply with all applicable federal and state laws and regulations, recognized professional standards, and the provisions cited in Division 1, [Subchapter A] of this subchapter, [chapter (relating to) Medicaid Procedures for Providers], and Division 11 [Subchapter L] of this subchapter, [chapter (relating to) General Administration], in addition to the conditions, specifications, limitations established by the Texas Health and Human Services Commission (Commission) [Texas Department of Health (department)] or its designee, and applicable requirements of their licensing authority.

(1) Physicians. Physicians shall be reimbursed for all services covered by the Texas Medicaid Program: examinations and hearing evaluations.

(2) Audiologists. Audiologists shall be reimbursed for hearing evaluations.

(3) Hearing aid fitters and dispensers shall be reimbursed for the fitting and dispensing of a hearing aid.

(b) Hearing evaluations. Hearing evaluations must be recommended by a physician based upon examination of the recipient. Reimbursement for hearing evaluations will be made only to physicians or licensed audiologists. The recipient must have a medical necessity for a hearing aid as stated in §354.1231, Benefits and Limitations. The recipient must not have any medical contraindications to the ability to use or wear a hearing aid.

(1) A physician who recommends a hearing evaluation must be licensed to practice medicine in the state where and when the evaluation is conducted.

(2) The physician must indicate on the Physician Examination Report form if the recipient needs a hearing evaluation based on the examination of the recipient. Medicaid reimbursement for a hearing evaluation shall be based on the physician's recommendation that the hearing evaluation is medically necessary.

(3) Providers must administer hearing evaluations using appropriate procedures as specified within their scope of practice and recognized professional standards.

(4) Reimbursement for home visit hearing evaluations shall be made if the recipient's physician has documented that the recipient's medical condition prohibits traveling to the provider's place of business.

(5) Providers of hearing evaluations must have a report in the recipient's record. Providers must include in the report hearing evaluation test data.

(6) Hearing evaluations performed by fitters and dispensers are not reimbursable. If a fitter or dispenser performs a hearing evaluation on a recipient the recipient shall not be billed for the hearing evaluation.

(c) Hearing aids. Providers must offer each recipient eligible for a hearing aid a new instrument that meets the recipient's hearing need and that is within the allowable fee paid by the Texas Medicaid Program.

(1) Hearing aids above the maximum allowable fee. The Texas Medicaid Program reimburses only up to the maximum allowable fee for hearing aids as referenced in §355.8141, Reimbursement for Hearing Aid Services.

(2) Warranty. Providers must ensure that each hearing aid purchased through the Texas Medicaid Program is a new and current model that meets the performance specifications of the manufacturer and the hearing needs of the recipient. Providers must also ensure that each hearing aid is covered by a standard 12-month manufacturer's warranty, effective from the dispensing date.

(3) Required package. Providers must dispense each hearing aid purchased through the Texas Medicaid Program with all necessary tubing, cords, connectors, and a one-month supply of batteries. The instructions for care and use of the hearing aid must be included with the hearing aid package.

(4) Thirty-day trial period. Providers must allow each eligible recipient thirty days to determine if the recipient is satisfied with a hearing aid purchased through the Texas Medicaid Program. The trial period consists of thirty consecutive days from the dispensing date. Providers must inform recipients of the trial period and present the beginning and ending date of the trial period to the recipient in writing.

(A) During the trial period, providers may dispense additional hearing aids, as medically necessary, until the recipient is satisfied with the result of the hearing aid or the provider determines that the recipient cannot benefit from the dispensing of an additional hearing aid. A new trial period begins with the dispensing date of each hearing aid.

(B) Providers may charge a rental fee for hearing aids returned during the trial period.

(i) If a rental fee is charged, providers must assess the rental fee according to the rules and regulations established by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments and the State Board of Examiners for Speech-Language Pathology and Audiology.

(ii) If there is no signed agreement between the recipient and the provider specifying a greater amount, the maximum rental fee for eligible Medicaid recipients shall be \$2 per day. This fee shall not be a covered benefit of the Texas Medicaid Program. Recipients shall be responsible for paying any rental fee assessed them for instruments returned during the 30-day period. Providers must keep in the recipient's file the signed certification acknowledging responsibility to pay hearing aid rental fees.

(iii) Providers must comply with all procedures and directions of the Texas Medicaid Program regarding forms and certifications required during the 30-day trial period. Providers must allow thirty days to elapse from the hearing aid dispensing date before completing a "30-day trial period certification statement". The certification statement must be maintained by the provider in the recipient's file.

(5) Post-fitting checks. The fitter and dispenser must perform a post-fitting check of the hearing aid within five weeks of the initial fitting. The post-fitting check is part of the dispensing procedure and is not reimbursed separately.

(6) First revisit. The first revisit shall include a hearing aid check. Providers must make counseling available as needed within six months of the post-fitting check.

(7) Second revisit. The purpose of the second revisit is to make any necessary adjustments to the hearing aid. Provider must conduct a second revisit as needed.

§354.1235. Requirements for Provider Participation.

(a) Provider enrollment. Each physician, [or] audiologist, or fitter and dispenser of hearing aids claiming reimbursement for hearing aid services provided as a Title XIX benefit to an eligible Medicaid recipient must be enrolled in the Texas Medicaid Program.

(1) To be eligible for reimbursement of Title XIX benefits for hearing aid services covered by the Texas Medicaid Program, each provider of medical [~~Medical~~] care and services must enter into a written agreement with the department.

(2) Participating providers must comply with all federal and state laws and regulations governing the Texas Medicaid Program. Providers must also comply with the provisions, conditions, certifications, and limitations as described in this subchapter.

(b) Provider licensure and certification. To be eligible for participation as a provider of hearing aid services under the Texas Medicaid Program, physicians, ~~and~~ audiologists, and fitters and dispensers must meet applicable federal and state licensing and ~~certification~~ laws and rules for the services they provide. ~~For [The following requirements shall be applicable to] Medicaid providers of hearing aid services practicing in the State of Texas, these include:~~

(1) Physicians (MD or DO) must be currently licensed to practice medicine by the State Board of Medical Examiners.

(2) Audiologists must be currently licensed by the State Board of Examiners for Speech-Language Pathology and Audiology and be certified by the American Speech-Language-Hearing Association (ASHA) or meet ASHA equivalency requirements.

(3) Fitters and dispensers must be currently licensed by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

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 July 18, 2005.

TRD-200502911

Steve Aragón
Chief Counsel

Texas Health and Human Services Commission
Earliest possible date of adoption: August 28, 2005
For further information, please call: (512) 424-6900



CHAPTER 358. MEDICAID ELIGIBILITY

The Texas Health and Human Services Commission (HHSC) proposes to amend §358.105(5), which describes individuals who are eligible under Type Program 51, as well as the program references in §§358.200(d), 358.210(a)(4), and 358.465(c). In addition, the proposal deletes or updates obsolete references, such as changing "department" to "commission."

The HHSC proposes to amend the rules relating to Type Program 51 due to no funds having been appropriated to the program beyond the current biennium, and because those clients affected will be assisted to employ an option available under federal law to retain Medicaid eligibility without interruption.

Under Type Program 51, Medicaid eligible individuals whose income exceeds the HHSC's Title XIX institutional income limit since July 1, 1979, because of a cost-of-living increase in pension or retirement benefits, continue to be eligible for medical benefits. This is because the applicable cost-of-living increases are excluded from countable income. This program has been funded with 100% state funds under a Rider to legislative appropriations that the 79th Texas Legislature did not continue.

Texas residents who require nursing home care and who have monthly income above the income cap but below the private pay cost of the care may have insufficient funds to pay for the needed care. To address this problem federally, Congress in 1993 amended section 1917 of the Social Security Act to provide for an income diversion trust, called a "Qualified Income Trust" or "QIT" (See 42 USC §1396p(d)(4)(B)). The proper use of a QIT allows a person to legally divert the person's income into a trust, after which the income is not counted for purposes of the Medicaid eligibility income cap. Those individuals affected by the repeal of the Type Program 51 rules may retain eligibility for medical assistance without interruption by establishing a QIT, and HHSC is coordinating assistance for these clients towards helping to ensure that each affected client establishes a QIT before Type Program 51 ends.

Tracy Henderson, Chief Financial Officer, has determined that for the first five-year period the proposed amendments are in effect, there are fiscal implications for state government as a result of enforcing or administering the amended sections. The effect on state government for the first five-year period is an estimated reduction in cost of approximately \$481,000 per year. HHSC has not found that there would be any fiscal implications for local government as a result of enforcing or administering the amended sections. There will be no effect on small or micro businesses.

Anne Heiligenstein, Deputy Executive Commissioner for Social Services, has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended sections is continued Medicaid eligibility under another program for those clients affected, but with federal matching funds to assist the state in paying the benefits of those clients affected.

Questions about the content of this proposal may be directed to John Stockton at (512) 206-4764 with the Long Term Care Medicaid Policy section of the HHSC Office of Family Services. Written comments on the proposal may be submitted to John Stockton, LTC ME Policy, Mail Code 2090, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication in the *Texas Register*.

Under Government Code, §2007.003(b), HHSC has determined that Chapter 2007 of the Government Code does not apply to these rules. The changes the proposed amendment makes does not implicate a recognized interest in private real property. Accordingly, HHSC is not required to complete a takings impact assessment.

SUBCHAPTER A. GENERAL INFORMATION

1 TAC §358.105

The amendments are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

No other statutes, articles or codes are affected by the amendments.

§358.105. *Description of Eligible Clients.*

The Texas Medical Assistance Program provides, under Title XIX (Medicaid) of the Social Security Act, certain benefits to all individuals who meet the commission's [~~department's~~] definition of eligible recipients. Eligible recipients are:

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

(3) individuals who are receiving supplemental security income (SSI) cash benefits under Title XVI of the Social Security Act. The Social Administration (SSA) establishes initial and continuing eligibility by using SSI eligibility criteria. These individuals are eligible for Medicaid benefits as long as they are eligible to receive SSI cash benefits. SSA notifies the commission [~~department~~] when an individual is added to the SSI eligibility rolls, and the commission [~~department~~] sends the recipient notification of Medicaid eligibility, identification cards, and an explanation of Title XIX benefits;

(4) individuals who live in a Title XIX-approved long-term care medical facility and who would be eligible for SSI cash benefits if they were living outside the facility except that their incomes exceed the SSI payment standard but are less than a special income limit established by the commission [~~department~~]. An individual must live in one or more institutions throughout at least 30 consecutive calendar days to be eligible under the special income limit:

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

~~{(5) individuals who are eligible for vendor payments in Title XIX-approved long-term care facilities and whose incomes exceed the special income limit because of a cost-of-living increase in any pension or retirement benefits. These individuals continue to be eligible for Title XIX coverage under Type Program 51;}~~

~~{(A) to maintain eligibility under this program, these individuals must continue to live in a Title XIX medical facility, to require long-term care, and to meet all SSI eligibility standards except for income;}~~

~~{(B) countable income, excluding the amount of the applicable pension or retirement benefit increase(s), must be less than the special income limit established by the department;}~~

~~{(C) in redetermining eligibility, the department excludes all future cost-of-living increases in any pension or retirement benefits as long as an individual remains eligible under Type Program 51;}~~

(5) [(6)] individuals in a Title XIX-approved medical facility for whom vendor payments were made under Title XIX for the month of December 1973. These individuals remain eligible for Title XIX benefits under Type Program 02, subsequent to January 1, 1974, as long as they:

(A) remain in the facility continuously, except for brief home visits not to exceed three days;

(B) continue to meet the commission's [~~department's~~] December 1973 eligibility standards;

(C) continue to need care as determined under utilization review plans and other professional audit procedures applicable under the Title XIX program. If the individual leaves the Title XIX medical facility to enter a Title XIX-approved hospital, and upon release from the hospital re-enters a Title XIX facility, he is considered to have remained in a Title XIX facility on a continuous basis. If upon release, however, he enters a living arrangement other than a Title XIX facility, his Medicaid eligibility ends;

(6) [(7)] individuals who were receiving both public assistance and Social Security benefits in August 1972. These individuals continue to be eligible for Title XIX coverage under Type Program 03. They must meet SSI eligibility criteria in the current month, with the exclusion of the amount of the October 1972 20% increase. Subsequent increases in Social Security benefits, however, are not exempt for this group;

(7) [(8)] individuals who were denied SSI benefits for any reason since April 1977. These individuals may be eligible for continued Title XIX coverage under Type Program 03, if they meet all current SSI eligibility criteria except for any Social Security cost-of-living increases received since they last received both SSI and Social Security benefits in the same month. The earliest cost-of-living increase that can be excluded under Type Program 03 is the increase received in July 1977;

(8) [(9)] individuals who are covered under Rider 49 provisions, and who were receiving Level II intermediate care in a Title XIX nursing facility on March 1, 1980. These individuals continue to be eligible for Title XIX medical benefits upon discharge from the facility, if they continue to meet:

(A) the categorical and financing eligibility criteria last used to determine eligibility in the nursing facility; and

(B) the criteria for Level II intermediate care as determined by the state [~~long-term care units of the Texas Department of Health (TDH)~~]. This eligibility category is also available to individuals who were Medicaid eligible and receiving Level III intermediate care or skilled nursing care in a Title XIX nursing facility on March 1, 1980, and who are subsequently determined to meet Level II intermediate care. Commission [~~Department~~] staff determine continued eligibility using the criteria for Type Programs 02, 03, or 14, [~~or 51;~~] depending upon which criteria applied when the recipient last lived in a Title XIX nursing facility;

(9) [(10)] individuals who were denied SSI benefits because of an increase in or receipt of RSDI disabled children's benefits. These individuals may continue to be eligible for Medicaid if they:

(A) are at least 18;

(B) become disabled before they are 22;

(C) are denied SSI benefits because of entitlement to or an increase in RSDI disabled children's benefits received on or after July 1, 1987, and any subsequent increase; and

(D) meet current SSI criteria, excluding the children's benefit specified in this paragraph;

(10) [(11)] disabled individuals who were denied SSI benefits because of receipt of Social Security early aged widow's or widower's benefits may continue to be eligible for Medicaid until they are eligible for Medicare. Medicaid benefits cannot begin before July 1, 1988, regardless of when an individual became eligible for or was denied SSI. To be eligible, an individual must:

(A) be at least 60; and

(B) continue to meet current SSI eligibility criteria if the early aged widow's or widower's benefit is excluded;

(11) [(12)] individuals who are aliens living illegally in the United States (as mandated by the Omnibus Reconciliation Act of 1986 and the Immigration Reform Control Act of 1986). The Medicaid coverage is limited to emergency medical conditions [~~as defined by the National Heritage Insurance Corporation~~], and aliens are required to meet all of SSI criteria;

(12) [(13)] individuals who apply for AFDC, SSI, or medical assistance only (MAO) are eligible for Medicaid coverage of unpaid medical bills during the three months before application. When a bona fide agent requests application services, this provision also covers deceased individuals;

(13) ~~[(14)]~~ individuals who are non-Medicaid eligible but may receive Title XIX primary home care services. Community Attendant ~~[Waiver 5]~~ eligibility does not entitle the client to any other Title XIX services;

(14) ~~[(15)]~~ children who are medically handicapped and are eligible to receive waiver services of a licensed nurse and other ~~[HCFA-]~~approved home and community-based Medicaid services;

(15) ~~[(16)]~~ individuals who are enrolled in Medicare Part A; have income below established poverty levels; have resources no more than twice the limit for the SSI program. These individuals may be eligible to be qualified Medicare beneficiaries (QMBs). QMB clients do not receive regular Medicare benefits;

(16) ~~[(17)]~~ children who were receiving SSI benefits as of August 22, 1996, and were subsequently denied because of the change in disability criteria required by Public Law 104-193. This coverage is mandated by Public Law 105-33, the Balanced Budget Act of 1997, effective July 1, 1997.

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 July 15, 2005.

TRD-200502891

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-6900



SUBCHAPTER B. MEDICARE AND THIRD-PARTY RESOURCES

1 TAC §358.200, §358.210

The amendments are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

No other statutes, articles or codes are affected by the amendments.

§358.200. *Medicare Benefits.*

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

(d) If clients in Type Programs 02, 14, ~~[and 51]~~ and Rider 49 are not eligible for qualified Medicare beneficiary (QMB) benefits, neither are they eligible for buy-in.

§358.210. *Time Frames for Buy-in Enrollment.*

(a) Clients who have Medicare Part B coverage at the time they are certified for Medicaid are enrolled as follows:

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

(4) Clients who are denied in error and are recertified have continuous enrollment for buy-in. This paragraph is true except for those clients in Type Programs 02, 14, ~~[and 51]~~ and Rider 49 who are not eligible for QMB benefits.

(5) (No change.)

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

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

Filed with the Office of the Secretary of State on July 15, 2005.

TRD-200502892

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-6900



SUBCHAPTER E. INCOME

1 TAC §358.465

The amendments are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

No other statutes, articles or codes are affected by the amendments.

§358.465. *Income Exclusions.*

(a) General exclusion. For each month, the first \$20 of unearned or earned income is excluded. This exclusion is applied first to unearned income, then to earned income if the unearned income is less than \$20. If no unearned income exists, the entire \$20 exclusion is applied to the earned income. Exceptions are as follows.

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

(3) The \$20 general exclusion does not apply to Type Program 14 and community attendant ~~[1929(b)]~~ cases.

(b) Earned income exclusion. After applying the \$20 general exclusion, the commission ~~[department]~~ excludes \$65 of the remaining earned income plus one-half of the remaining earnings. In the case of an eligible couple, the commission ~~[department]~~ allows only one earned income exclusion for the couple's combined earned income. The earned income exclusion does not apply to Type Program 14 cases.

~~[(c) Income exclusion for Type Program 51 recipients. For clients meeting Type Program 51 criteria, the department excludes the amount of the cost-of-living increase that resulted in denial of Type Program 14 eligibility. After Type Program 51 eligibility is established, the department excludes all future cost-of-living increases in pension or retirement benefits.]~~

(c) ~~[(d)]~~ Income exclusion for Type Program 03 clients. For clients who qualify for Type Program 03 and who received a 20% Social Security cost-of-living increase in October 1972, the commission ~~[department]~~ excludes the amount of that increase in determining the client's eligibility. For clients who qualify for Type Program 03 because of an SSI denial after April 1977, the commission ~~[department]~~ excludes Social Security cost-of-living increases received since the client last received both SSI and Social Security benefits in the same month.

(d) ~~[(e)]~~ VA aid-and-attendance exclusion. The following requirements apply:

(1) The ~~commission~~ [department] excludes aid-and-attendance allowances, housebound allowances, and VA reimbursement for unusual medical expenses in the income eligibility determination and applied income calculation because they represent medical expenses paid by a third party.

(2) Clients who have changed to the 1979 pension plan or who initially obtain entitlement to a VA pension after January 1, 1979, must apply for aid-and-attendance or other potentially available benefits as a condition of eligibility.

(e) [(f)] Exclusion for work expenses for the blind. In addition to the earned income exclusion, a blind client's earned income is reduced by the amount of expenses that he can reasonably attribute to the earnings of the income.

(f) [(g)] Housebound allowances. The ~~commission~~ [department] excludes VA housebound allowances in the eligibility determination and applied income processes because they represent medical expenses paid by a third party. Veterans and widow(ers) who do not qualify for regular aid and attendance may qualify for a housebound allowance. Housebound allowances are usually received only by an individual living in the community.

(g) [(h)] Reduced income. Earned or unearned income not excluded from consideration by the previous exclusions may be reduced to the extent that it is needed to fulfill a blind or disabled client's approved plan for attaining self-support.

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 July 15, 2005.

TRD-200502893

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-6900



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 62. CAREER COUNSELING SERVICES

16 TAC §§62.1, 62.10, 62.20, 62.21, 62.40, 62.60, 62.70, 62.71, 62.80, 62.90

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

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of 16 Texas Administrative Code Chapter 62, §§62.1, 62.10, 62.20, 62.21, 62.40, 62.60, 62.70, 62.71, 62.80 and 62.90, concerning the Career Counseling Services program.

Acts of the 79th Texas Legislature, House Bill 2856 repealed statutory requirements regarding the regulation of career counseling services, Texas Occupations Code, Chapter 2502 effective June 18, 2005. Therefore, the Department proposes to repeal existing administrative rules regarding the regulation of career counseling services since there is no longer a statutory requirement to regulate career counseling services under the provisions of Texas Occupations Code, Chapter 2502 as set forth in House Bill 2856.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of the repeal.

Mr. Kuntz also has determined that for each year of the first five-year period the repeal is in effect, the public benefit will be reduced confusion because the rules lack statutory authority and cannot be enforced.

There will be no effect on small or micro-businesses as a result of the proposed repeal. There are no anticipated economic costs to persons required to comply with the proposed repeal.

Comments on the repeal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under House Bill 2856 Acts of the 79th Texas Legislature and Texas Occupations Code, Chapter 51 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapter 51 and Chapter 2502. No other statutes, articles, or codes are affected by the repeal.

§62.1. *Authority.*

§62.10. *Definitions.*

§62.20. *Certificate of Authority Requirements.*

§62.21. *Certificate of Authority Application Process.*

§62.40. *Security Requirements.*

§62.60. *Responsibilities of the Department.*

§62.70. *Responsibilities of the Certificate Holder.*

§62.71. *Responsibilities of the Certificate Holder--Consumer Complaints.*

§62.80. *Fees--Original Certificate of Authority.*

§62.90. *Administrative Penalties and Sanctions.*

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 July 15, 2005.

TRD-200502896

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 463-7348



PART 8. TEXAS RACING COMMISSION

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

16 TAC §309.8

The Texas Racing Commission proposes an amendment to §309.8, relating to the license fees charged to pari-mutuel racetracks. The amendment raises the daily licensing fee for simulcasting for all pari-mutuel racetracks and raises the annual fee for licensed but inactive Class 2 racetrack licenses.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for local government as a result of enforcing the amendment. The amendment will have fiscal implications for state government, in that it will generate additional revenue for the Commission's dedicated account in the state treasury, which is used to fund all agency operations. Although the exact amount of the additional revenue will depend on the number of simulcast days offered by the state's various pari-mutuel racetracks, Ms. Flowerday estimates that \$600,000 - \$700,000 in additional revenue will be generated each year by the fee increase.

Ms. Flowerday has also determined that for each year of the first five years the amendment is in effect the anticipated public benefit will be that the Commission will fully comply with applicable law by raising sufficient revenue to fund regulatory operations. The exact cost of compliance to a pari-mutuel racetrack will vary, depending on the type and class of racetrack. Because the fee increase is directly related to the conduct of simulcasting, the cost of compliance will also depend on the number of days a racetrack elects to conduct wagering on simulcast races. Under the amendment, the annual license fee for a Class 2 inactive, non-operating racetrack now will be \$20,000, an increase of \$10,000. Under the amendment, a Class 1, 2, or greyhound racetrack now will pay \$410 per simulcast day, an increase of \$100 per simulcast day, and a Class 3 or 4 racetrack now will pay \$300 per simulcast day, an increase of \$65 per simulcast day. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound training, and greyhound breeding industries.

Comments on the proposal may be submitted on or before August 29, 2005, to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §5.01, which authorizes the Commission to prescribe reasonable license fees for each category of license; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; and §6.18, which authorizes the Commission to prescribe a reasonable annual fee to be paid by each racetrack licensee.

The amendment implements Texas Civil Statutes, Article 179e.

§309.8. Racetrack License Fees.

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

(c) Inactive License Fee. An association that is licensed but is not conducting live racing or simulcasting shall pay an inactive license fee. The fee is due to the Commission on September 1 of each year.

The inactive license fee for a greyhound racing association is \$25,000. The inactive license fee for a horse racing association is:

(1) (No change.)

(2) for a Class 2 racetrack, \$20,000 [~~\$10,000~~];

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

(d) Simulcast Fee. An association shall pay a simulcast fee for each day on which the association offers a simulcast race for wagering. The fee is due to the Commission no later than 5:00 p.m. of the day following the day on which the simulcast is offered. The simulcast fee is:

(1) for a Class 1, Class 2, or greyhound racetrack, \$410 [~~\$310~~] per day; and

(2) for a Class 3 or Class 4 racetrack, \$300 [~~\$245~~] per day.

(e) - (f) (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 July 14, 2005.

TRD-200502870

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Earliest possible date of adoption: August 28, 2005

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



SUBCHAPTER B. OPERATIONS OF RACETRACKS

DIVISION 2. FACILITIES AND EQUIPMENT

16 TAC §309.120

The Texas Racing Commission proposes an amendment to §309.120, relating to parking areas at pari-mutuel racetracks. The amendment clarifies the requirements for parking for occupational licensees at the racetracks. The amendment is proposed to ensure the Commission's rules are consistent with state law relating to the possession of weapons in public places.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. Flowerday has also determined that for each year of the first five years the amendment is in effect the anticipated public benefit will be that the Commission's rules will be consistent with applicable state law. Because the existing operating racetracks already provide parking areas for occupational licensees, there are no additional costs to small businesses. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound training, and greyhound breeding industries.

Comments on the proposal may be submitted on or before August 29, 2005, to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks.

The amendment implements Texas Civil Statutes, Article 179e.

§309.120. Parking for Licensees.

An association shall provide a parking area for licensees [facility] outside the stable or kennel area [enclosure for licensees working on association grounds].

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 July 14, 2005.

TRD-200502871

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Earliest possible date of adoption: August 28, 2005

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



DIVISION 3. OPERATIONS

16 TAC §309.164

The Texas Racing Commission proposes an amendment to §309.164, relating to accounting practices at pari-mutuel racetracks. The amendment eliminates specific requirements for the accounting systems at pari-mutuel racetracks that are inconsistent with the types of systems commonly used by the racetracks.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. Flowerday has also determined that for each year of the first five years the amendment is in effect the anticipated public benefit will be that the Commission's rules will be consistent with technology currently available and will be appropriately limited in scope and purpose. There are no costs to small businesses. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound training, and greyhound breeding industries.

Comments on the proposal may be submitted on or before August 29, 2005, to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks.

The amendment implements Texas Civil Statutes, Article 179e.

§309.164. Accounting Practices.

(a) An association shall maintain an accounting system under the supervision of a certified public accountant. [~~The system must include detailed information regarding the purchase of goods for sale, inventory of goods held for sale, and goods sold. The system must indicate the unit of measure, the unit cost of items purchased and sold and in inventory and must provide adequate control and traceability without reconstruction of detailed records. The accounting system must be approved by the executive secretary.~~]

(b) (No change.)

~~{(e) An association shall maintain a system of internal accounting controls approved by the executive secretary.}~~

(c) [~~(d)~~] The Commission may review and conduct audits of all systems maintained under this 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 July 14, 2005.

TRD-200502872

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Earliest possible date of adoption: August 28, 2005

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



CHAPTER 311. OTHER LICENSES

SUBCHAPTER C. RESPONSIBILITIES OF INDIVIDUALS

16 TAC §311.211

The Texas Racing Commission proposes an amendment to §311.211, relating to possession of weapons at pari-mutuel racetracks. The amendment clarifies where on racetrack grounds the possession of a weapon is prohibited. The amendment is proposed to ensure the Commission's rules are consistent with state law relating to the possession of weapons in public places.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the anticipated public benefit will be that the Commission's rules will be consistent with applicable state law and that the patrons and occupational licensees will have notice of criminal laws that may affect their presence on racetrack grounds. There are no costs to small businesses. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound training, and greyhound breeding industries.

Comments on the proposal may be submitted on or before August 29, 2005, to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make

rules relating exclusively to horse and greyhound racing; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; and Texas Penal Code, §46.03.

The amendment implements Texas Civil Statutes, Article 179e.

§311.211. *Weapons Prohibited.*

(a) Except as otherwise provided by this section, a person may not possess ~~on association grounds~~ a weapon ~~prohibited by [listed under]~~ Penal Code, §46.03(a) if the person is in an area on association grounds to which admission ordinarily can be obtained only on payment of an admission fee or presentation of official credentials.

(b) This section does not apply to a person who is:

(1) a peace officer; or

(2) a commissioned security officer licensed by the Texas Commission on Private Security Agencies and approved by the executive secretary.

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 July 14, 2005.

TRD-200502873

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Earliest possible date of adoption: August 28, 2005

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



CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER E. TRAINING FACILITIES

16 TAC §313.501

The Texas Racing Commission proposes an amendment to §313.501, relating to licenses for training facilities. The amendment raises the annual licensing fee for training facilities that are authorized to provide official workouts for horses desiring to compete at pari-mutuel racetracks.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for local government as a result of enforcing the amendment. Based on the typical number of training facilities licensed by the Commission each year, the amendment is anticipated to raise an additional \$900 - \$1200 per year in revenue.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the anticipated public benefit will be that the Commission will fully comply with applicable law by raising sufficient revenue to fund regulatory operations. A small business wishing to hold a training facility license will be required to pay an annual license fee of \$1,800, an increase of \$300 per year. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The amendment will have no effect on the state's agricultural,

horse breeding, greyhound training, and greyhound breeding industries. The amendment may have an effect on the horse training industry, in that the training facility may pass along the additional cost of the license to the trainers using the facility. This may affect a trainer's ability to prepare a horse for competition in a cost-effective manner.

Comments on the proposal may be submitted on or before August 29, 2005, to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §3.021, which authorizes the Commission to charge an annual fee for licensing and regulating a training facility; §5.01, which authorizes the Commission to prescribe reasonable license fees for each category of license; and §7.05, which authorizes the Commission to adopt a fee schedule for licenses other than racetrack licenses that are issued by the Commission.

The amendment implements Texas Civil Statutes, Article 179e.

§313.501. *Training Facility License.*

(a) A training facility must be licensed by the Commission in accordance with this section to provide official workouts. Except as otherwise provided by this subchapter, an official workout obtained at a training facility licensed under this section satisfies the workout requirements of §313.103 of this title (relating to Eligibility Requirements).

(b) A training facility license expires on December 31 of the year in which the license was issued. The annual fee for a training facility license is \$1,800 [~~\$1,500~~], which is due and payable to the Commission on receipt of the license certificate.

(c) A training facility license is personal to the licensee and may not be transferred.

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 July 14, 2005.

TRD-200502874

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Earliest possible date of adoption: August 28, 2005

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



PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER A. ADMINISTRATION

16 TAC §402.102

The Texas Lottery Commission proposes amendments to 16 TAC §402.102, relating to the Bingo Advisory Committee. The proposed amendments change the date the Bingo Advisory Committee will automatically abolish and cease to exist unless

the Commission affirmatively votes to continue the Bingo Advisory Committee from August 31, 2005 to August 31, 2006. At the July 11, 2005 Commission meeting, the Commission voted to continue the Bingo Advisory Commission and to propose an abolishment date of August 31, 2006.

Benito Navarro, Acting Financial Administration Manager, has determined for each year of the first five years the proposed amendments are in effect there will no fiscal implications to state or local government. There will be no impact on small or micro businesses, individuals, or local or state employment as a result of implementing the section.

William L. Atkins, Charitable Bingo Operations Director, Charitable Bingo Operations Division, has determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of the proposed amendments is to continue the Bingo Advisory Committee so that the Committee can continue to advise the Commission as provided for in this rule and statute.

Written comments on the proposed amendments may be submitted to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, by facsimile, or via the agency's website online public comment form. Comments must be received within 30 days after the proposed amendments are published in the *Texas Register* to be considered.

The amendments are proposed under Occupations Code, §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction and under Occupations Code, §2001.057 which authorizes the Commission to adopt rules governing the operation of the Bingo Advisory Committee.

The amendments implement Occupations Code, Chapter 2001.

§402.102. *Bingo Advisory Committee.*

(a) - (i) (No change.)

(j) Duration. The BAC will automatically be abolished and cease to exist on August 31, 2006 [2005]. The BAC shall only remain in existence beyond August 31, 2006 [2005], if the Commission affirmatively votes to continue the Bingo Advisory Committee in existence.

(k) - (l) (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 July 13, 2005.

TRD-200502860

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 344-5113



TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.6

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §361.6, which specifies certain fees charged by the Board, including the fees for initial applications for licenses, endorsements, and registrations, as well as examination, renewal and late renewal fees.

The proposed amendments to §361.6 are necessary in order for the Board to utilize revenue, as provided in Article VIII of the General Appropriations Act (Senate Bill 1, 79th Legislature, Regular Session), which is contingent upon the Board assessing fees sufficient to generate, during the 2006 - 2007 biennium, \$219,690 in excess of \$5,163,000 for fiscal years 2006 and 2007. Under the current fee structure, the Board will not generate enough revenue during the 2006 - 2007 biennium to meet the amount necessary for the Board to access the contingent revenue.

Robert L. Maxwell, Executive Director of the Texas State Board of Plumbing Examiners, has determined that there will be a fiscal impact for persons required to comply with the amendments. For each year of the first five-year period that the amended rule is in effect, persons who have successfully passed a Master Plumber licensing examination will pay a one-time increased initial license fee, in the following amount:

Initial Master Plumber license--\$18

Mr. Maxwell has also determined that for the first five-year period that the amendments are in effect, persons who renew a Master Plumber license will be fiscally impacted by paying increased license renewal fees, in the following amount:

Master Plumber license--\$90 over five years (\$18 annually)

Master Plumber with Journeyman Plumber License--\$90 over five years (\$18 annually)

As required by §1301.403(e) of the Plumbing License Law, individuals who fail to renew a Master Plumber license by the annual renewal date of the license must pay an additional late fee in order to renew a license. Individuals who renew an expired license within 90 days after the expiration of the license, will pay an additional increased late renewal fee equal to one-half of the renewal fee. Individuals who renew an expired license more than 90 days after the expiration of the license, will pay an additional increased late renewal fee equal to the renewal fee. As prohibited by §1301.403(d) of the Plumbing License Law, no individual may renew a license that has been expired for two years or more.

Additionally, Mr. Maxwell has determined that each year of the first five years the amendments are in effect there should be no mandated fiscal impact on local government or state government as well as small businesses. Any local governments or small businesses that choose to pay the fees for any of their employees who hold a license or registration will be impacted by the amount of the fee increases. Neither local governments nor small businesses are required by state law or this rule to pay the fees of their employees.

The public benefit anticipated as a result of adopting the amendments will be the Board's ability to better protect the health, safety and welfare of the citizens by utilizing additional funding for administration and enforcement of the Plumbing License Law

and Board Rules. Administration and enforcement of the Plumbing License Law includes the investigation of consumer complaints, job-site compliance checks and pursuing action against persons who choose to endanger the health, safety and welfare of the citizens by violating the Plumbing License Law and Board Rules.

Comments on the proposed amendments may be submitted within 30 days of publication of the proposal in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200, or by e-mail to info@tsbpe.state.tx.us.

The amendments to §361.6 are proposed under and affect Title 8, Chapter 1301, Occupations Code ("Plumbing License Law" or "Act"), §§1301.251, 1301.253, 1301.403, the rule it amends and the General Appropriation Acts, Article VIII, Board of Plumbing Examiners (Senate Bill 1, 79th Legislature, Regular Session). Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.253 requires the Board to set fee amounts that are reasonable and necessary to cover the costs of administering the Act. Section 1301.403 sets forth the requirements for renewal of a license. The General Appropriations Act, Article VIII, Board of Plumbing Examiners (Senate Bill 1, 79th Legislature, Regular Session), provides additional funding to the Board contingent upon the Board assessing fees sufficient to generate, during the 2006 - 2007 biennium, \$219,690 in excess of \$5,163,000 for fiscal years 2006 and 2007.

No other statute, article or code is affected by the proposed amendments.

§361.6. *Fees.*

(a) The Board has established the following fees:

(1) Initial Licenses, Endorsements and Registrations

(A) Master Plumber license--~~\$198~~ [\$180];

(B) - (L) (No change.)

(2) (No change.)

(3) Renewals

(A) Master Plumber license--~~\$198~~ [\$180];

(B) - (H) (No change.)

(I) Master Plumber with Journeyman Plumber License--~~\$198~~ [\$180];

(J) - (N) (No change.)

(4) Other fees

(A) Late renewal

(i) Master Plumber:

(I) less than 90 days--one-half renewal fee--~~\$99~~ [\$90];

(II) more than 90 days--renewal fee--~~\$198~~ [\$180];

(ii) - (vii) (No change.)

(viii) Master Plumber with Journeyman Plumber:

(I) less than 90 days--one half renewal fee--~~\$99~~ [\$90];

(II) more than 90 days--renewal fee--~~\$198~~ [\$180];

(ix) - (xiv) (No change.)

(B) - (D) (No change.)

(b) Methods of payment

(1) (No change.)

(2) Fees paid by mail or in person may be made in the form of money order, cashier's check, personal check, business check, or the exact amount of cash (cash payments by mail are not recommended).

(3) - (4) (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 July 12, 2005.

TRD-200502834

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 936-5224

◆ ◆ ◆
PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.72

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.72, concerning Contingency Fees.

The amendment to §501.72 will correct two typographical errors.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be correction of two typographical errors.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on August 26, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because there is no effect on small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.72. Contingency Fees.

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

(c) A certificate or registration holder shall not perform an engagement as a testifying accounting expert for a contingent fee. A testifying accounting expert is one that at any time during the ~~proceeding~~ [preceeding] becomes subject to disclosure and discovery under the procedural rules of the forum where the matter for which his services were engaged is pending.

(d) - (e) (No change.)

(f) Interpretive Comment: A consulting accounting expert may become a testifying accounting expert when the client for whom he is working makes his work available to a testifying expert. A consulting accounting expert who is working on a contingent fee basis should work closely with his client to ensure [~~insure~~] that he does not inadvertently become a testifying expert through the actions of his client. An accounting expert may not accept a contingent fee for part of an engagement and a set fee for part of the same engagement. A consulting accounting expert who becomes a testifying expert may not accept a contingent fee for the part of his work done as a consultant, but must be compensated on a set fee basis for all of the work performed on the same engagement. A consulting accounting expert who enters into a contingent fee engagement should reach an agreement, preferably in writing, with the client as to how he will be compensated should he become a testifying expert prior to beginning the engagement.

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 July 14, 2005.

TRD-200502879

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 305-7848



SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.81

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.81, concerning Firm License Requirements.

The amendment to §501.81 deletes references to a permissible disclaimer that CPAs may use in conjunction with their association with an unlicensed entity and refers a person to §501.86(a) for permissible disclaimers.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be increased clarity of the circumstances requiring the use of a disclaimer that an unlicensed entity is not a CPA firm.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on August 26, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the cost of compliance is negligible.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of

compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.81. *Firm License Requirements.*

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

(c) Each advertisement or written promotional statement that refers to a CPA's designation and his or her association with an unlicensed entity in the client practice of public accountancy must include the disclaimer contained in §501.86(a) of this title (relating to Required Disclaimers). [~~": "This firm is not a CPA firm." The disclaimer must be included in conspicuous proximity to the name of the unlicensed entity and be printed in type not less bold than that contained in the body of the advertisement or written statement. If the advertisement is in audio format only, the disclaimer shall be clearly declared at the conclusion of each such presentation.~~]

(d) The requirements of subsection (c) of this section do not apply with regard to a certificate or registration holder performing services:

(1) (No change.)

(2) as an employee, officer, or director of a financial [~~federally insured depository~~] institution, as defined by §201.101, Finance Code, from preparing or presenting records or documents when lawfully acting within the scope of the [~~legally permitted~~] activities of the institution [~~institution's trust department~~].

(e) - (f) (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 July 14, 2005.

TRD-200502880

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 305-7848



22 TAC §501.83

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §501.83, concerning Firm Names.

The proposed repeal of §501.83 will permit the Board to adopt a revised rule regarding firm names.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be zero.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be zero.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be that this rule will have been replaced with a re-written rule.

The probable economic cost to persons required to comply with the repeal will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on August 26, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because there is no cost to small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§501.83. *Firm Names.*

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 July 14, 2005.

TRD-200502881

Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: August 28, 2005
For further information, please call: (512) 305-7848



22 TAC §501.83

The Texas State Board of Public Accountancy (Board) proposes new §501.83, concerning Firm Names.

The new §501.83 will establish the general rules applicable to all firms when establishing a firm name.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be zero.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be improved understanding of the Board's standards for firm names as applicable to all firms as well as the additional requirements based on legal form of ownership or in circumstances when an owner is prohibited from practicing public accountancy.

The probable economic cost to persons required to comply with the new rule will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on August 26, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the cost of compliance is minimal.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rule is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§501.83. Firm Names.

(a) General Rules Applicable to all Firms:

(1) A firm name may not contain words, abbreviations or other language that are misleading to the public, or that may cause confusion to the public as to the legal form or ownership of the firm.

(2) A firm licensed by the board may not conduct business, perform or offer to perform services for or provide products to a client under a name other than the name in which the firm is licensed.

(3) A word, abbreviation or other language is presumed to be misleading if it:

(A) is a trade name or assumed name that does not comply with paragraph (4)(A) or (B) of this subsection;

(B) states or implies the quality of services offered, special expertise, expectation as to outcomes or favorable results, or geographic area of service;

(C) includes the name of a non-owner of the firm;

(D) includes the name of a non-CPA, except as provided in paragraph (4)(B) of this subsection;

(E) states or implies educational or professional attainment not supported in fact;

(F) states or implies licensing recognition for the firm or any of its owners not supported in fact; or

(G) includes a designation such as "and company," "company," "associates," "and associates," "group" or abbreviations thereof or similar designations implying that the firm has more than one employed licensee unless there are at least two employed licensees involved in the practice. Independent contractors are not considered employees under this subsection.

(4) A word, abbreviation or other language is presumed not misleading if it:

(A) is the name, surname, or initials of one or more current or former CPA owners of the firm, its predecessor firm or successor firm;

(B) is the name, surname, or initials of one or more current or former foreign practitioner owners of the firm, its predecessor firm or successor firm who are or would have been eligible to practice public accountancy in this state under §513.2 of this title (relating to Application for Registration of Foreign Practitioners);

(C) indicates the legal organization of the firm, or;

(D) states or implies a limitation on the type of service offered by the firm, such as "tax," "audit" or "investment advisory services," provided the firm in fact principally limits its practice to the type of service indicated in the name.

(5) The board may place conditions on the licensing of a firm in order to ensure compliance with the provisions of this section.

(b) Additional Requirements Based on Legal Form or Ownership.

(1) The names of a corporation, professional corporation, limited liability partnership, professional limited liability company or other similar legal forms of ownership must contain the form of ownership or an abbreviation thereof, such as "Inc.," "P.C.," "L.L.P." or "P.L.L.C."; except that a limited liability partnership organized before September 1, 1993 is not required to utilize the words "limited liability partnership" or any abbreviation thereof.

(2) Sole Proprietorships:

(A) The name of a firm that is a sole proprietor must contain the surname of the sole proprietor as it appears on the individual license issued to the sole proprietor by the board.

(B) A partner surviving the death of all other partners may continue to practice under the partnership name for up to two years after becoming a sole proprietor, notwithstanding subsection (d) of this section.

(c) The name of any current or former owner may not be used in a firm name during any period when such owner is prohibited from practicing public accountancy and prohibited from using the title "certified public accountant," "public accountant" or any abbreviation thereof, unless specifically permitted by the board.

(d) A firm licensed by the board is required to report to the board any change in the legal organization of the firm and amend the firm name to comply with this section regarding firm names for the new organization within thirty days of the effective date of such change.

(e) This section regarding firm names does not affect firms licensed by the board prior to the effective date of this section, but does apply to any change in legal organization or name that occurs after the effective date of this section. Nothing in this subsection prohibits the board from placing conditions on the licensing of a firm pursuant to subsection (a)(5) of this section at the time of renewal of the firm 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 July 14, 2005.

TRD-200502882

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 305-7848



22 TAC §501.86

The Texas State Board of Public Accountancy (Board) proposes new §501.86, concerning Required Disclaimers.

The new §501.86 will establish the circumstances under which an entity that is not qualified to register as a CPA firm may offer certain accounting services or use certain forms reserved for CPAs by disclaiming any status as a CPA firm.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be zero.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be clarification of the circumstances in which an entity not qualified to register as a CPA firm may offer certain services and the certain terms if an appropriate disclaimer is used in advertising.

The probable economic cost to persons required to comply with the new rule will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on August 26, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the cost of compliance is minimal.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rule is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§501.86. Required Disclaimers.

(a) An entity that is not qualified to register as a CPA firm, but which engages in aspects of public accountancy as permitted by statute and employs or engages one or more certificate or registration holders in such work must include an asterisk by the name of the employer or principal in each advertisement or written statement by the certificate or registration holder and/or by his employer or principal in which reference is made to the certificate or registration holder or his association with the employer or principal as such, which asterisk shall refer to a notation included in conspicuous proximity and with reasonable prominence that says "This firm is not qualified to be licensed as a CPA firm in Texas."

(b) An entity that is not qualified to register as a CPA firm, but which offers services using terms reserved to certificate or registration holders and licensed CPA firms under the Act, but are permitted by

statute to be performed by persons or entities that do not hold a certificate or license issued by the board, such as "internal audit services" or "forensic accounting services", must include an asterisk by each such reserved term, which asterisk shall refer to a notation included in conspicuous proximity and with reasonable prominence that says "This firm is not qualified to be licensed as a CPA firm in Texas."

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 July 14, 2005.

TRD-200502883

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 305-7848



CHAPTER 505. THE BOARD

22 TAC §505.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.10, concerning Board Committees.

The amendment to §505.10 will modify the frequency with which the peer assistance oversight committee reports to the Board.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be alignment of the committee's requirement to report to the Board with the need for such reports based on the volume of information provided by the committee.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on August 26, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not affect small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§505.10. *Board Committees.*

(a) - (d) (No change.)

(e) Standing committee structure and charge to committees.

The standing committees shall consist of policy-making committees and working committees comprised of the following individuals and shall be charged with the following responsibilities.

(1) - (9) (No change.)

(10) The peer assistance oversight committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall oversee the peer assistance program administered by the Texas Society of Certified Public Accountants as required under the Texas Health and Safety Code, Chapter 467.001(B), and insure that the minimum criteria as set out by the Texas Commission on Alcohol and Drug Abuse are met. It shall make recommendations to the board and the TSCPA regarding modifications to the program and, if warranted, refer cases to other board committees for consideration of disciplinary or remedial action by the board. The committee shall report to the board on a semi-annual [quarterly] basis, by case number, on the status of the program.

(11) (No change.)

(f) - (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 July 14, 2005.

TRD-200502884

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 305-7848



CHAPTER 511. CERTIFICATION AS A CPA

SUBCHAPTER C. EDUCATIONAL

REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.57, concerning Definition of Accounting Courses.

The amendment to §511.57 will expand and clarify the means by which an individual may comply with the Board's accounting course requirements.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater understanding of how an individual may meet the Board's accounting course requirements.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on August 26, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not affect small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.57. *Definition of Accounting Courses.*

(a) An individual shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a recognized educational institution and present a valid transcript from that institution that shows degree credit for not fewer than 30 semester hours of accounting courses as defined in subsection (c) of this section; or

(2) Hold a baccalaureate or higher degree from a recognized educational institution, and after obtaining the degree, complete not fewer than 30 semester hours of accounting courses, as defined in subsection (c) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board, and that the accounting programs offered at the community colleges are reviewed and accepted by the board.

~~[(a) An individual who holds a baccalaureate degree from a recognized educational institution may enter into a course of study at an accredited community college, provided that the accounting program offered at the community college was reviewed and accepted by the board.]~~

(b) Credit for hours taken at recognized colleges and universities using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

(c) The [Effective January 1, 2004 the] board will accept not fewer than 30 passing semester hours of [upper division] accounting courses without repeat from the courses listed below. The courses must meet the board's standards by containing sufficient business knowledge and application to be useful to candidates taking the Uniform CPA Examination. A recognized educational institution must have accepted the courses for purposes of obtaining a baccalaureate degree or its equivalent, and they must be shown on an official transcript. At least 15 of these hours must result from physical attendance at classes meeting regularly on the campus of the [any] transcript-issuing institution.

- (1) intermediate accounting, advanced accounting;
- (2) cost accounting;
- (3) auditing, internal accounting control and evaluation;
- (4) report writing (principally writing financial reports, internal control reports, and management letters);
- (5) financial statement analysis;
- (6) accounting theory, standards, and analysis;
- (7) up to twelve semester hours of income tax;
- (8) accounting for governmental and/or other nonprofit organizations;
- (9) up to twelve semester hours of accounting systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the college or university accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;
- (10) fraud examination; and
- (11) an accounting internship program (not to exceed 3 semester hours) which meets the following requirements:

(A) the accounting knowledge gained is equal to or greater than the knowledge gained in a traditional accounting classroom setting;

(B) the employing firm provides the faculty coordinator and the student with the objectives to be met during the internship;

(C) the internship plan is approved in advance by the faculty coordinator;

(D) the employing firm provides a significant accounting work experience with adequate training and supervision of the work performed by the student;

(E) the employing firm provides an evaluation of the student at the conclusion of the internship, provides a letter describing the duties performed and the supervision to the student, and provides a copy of the documentation to the faculty coordinator and the student;

(F) the student keeps a diary comprising a chronological list of all work experience gained in the internship;

(G) the student writes a paper demonstrating the knowledge gained in the internship;

(H) the student and/or faculty coordinator provides evidence of all items upon request by the board;

(I) the internship course shall not be taken until a minimum of 12 semester hours of upper division course work has been completed; and

(J) the internship course shall be taken prior to completing the last full semester of course work in order to integrate the knowledge gained during the internship into the curriculum requirements for the degree program.

(12) At its discretion, the board may accept up to three semester hours of credit for accounting coursework not included in paragraphs (1)-(11) of this subsection, including courses with substantial merit in the context of a career in public accounting, and courses which are [any other course which is] principally accounting or auditing in nature but which may be designated by some other name. For any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing its merit and content. [(and the verification of which is obtained in writing from the particular college or university). After the November 1997 examination, elementary accounting may not be considered under this rule; and]

(d) The following types of courses do not meet the accounting course definition in subsection (c) of this section:

- (1) elementary accounting;
- (2) principles of accounting;
- (3) financial and managerial accounting;
- (4) introductory accounting courses;
- (5) accounting software courses; and,

(6) [(+3)] any CPA review course offered by an educational institution or of a proprietary nature may not be considered in meeting the requirements under this rule.

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 July 14, 2005.

TRD-200502885

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 305-7848



CHAPTER 515. LICENSES

22 TAC §515.8

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.8, concerning Retirement Status or Permanent Disability.

The amendment to §515.8 will clarify the requirements and procedures for a certificate or registration holder to claim and maintain retirement or permanent disability status.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be improved understanding of the requirements to claim and maintain retirement or permanent disability status.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on August 26th, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because no new requirements are imposed on small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.8. *Retirement Status or Permanent Disability.*

(a) Retired status. An individual who holds a current license who is 60 years old and has filed a request on a form prescribed by the board stating the licensee is no longer employed may be granted retired status at the time of license renewal.

~~[(H)]~~ A certificate or registration holder [licensee] who has been granted retired status and who reenters the work force in a position that has an association with accounting work for which he receives compensation [becomes employed] automatically loses the retired status. Upon reentry into the workforce under such conditions, the certificate or registration holder ~~[and]~~ must notify the board and request a new license renewal notice and:

(1) ~~[(A)]~~ pay the license fee established by the board for the period since he became employed;

(2) ~~[(B)]~~ complete a new license renewal notice; and

(3) ~~[(C)]~~ meet the continuing professional education requirements for the period since he was granted the retired status.

~~[(2) All board rules and all provisions of the Act apply to a licensee in either an active or retired status.]~~

(b) Permanent disability status. Permanent disability status may be granted to a certificate or registration holder [licensee] who submits to the board a statement and a notarized affidavit from the licensee's physician stating that the certificate or registration holder [licensee] is unable to work and clearly details the disability. This status may be granted only at the time of license renewal.

~~[(H)]~~ A certificate or registration holder [licensee] who has been granted permanent disability status and who reenters the work force in a position that has an association with accounting work for which he receives compensation [becomes employed] automatically loses the permanent disability status. Upon reentry into the workforce under such conditions, the certificate or registration holder ~~[and]~~ must notify the board and request a new license renewal notice and:

(1) ~~[(A)]~~ pay the license fee established by the board for the period since he became employed;

(2) ~~[(B)]~~ complete a new license renewal notice; and

(3) ~~[(C)]~~ meet the continuing professional education requirements for the period since he was granted disability status.

~~[(2) All board rules and all provisions of the Act apply to a licensee in permanent disability status.]~~

(c) For purposes of this section the term "association with accounting work" shall include the following:

(1) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance, or audit; or

(2) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products involving accounting work, including such designation on a business card, letterhead, promotional brochure, advertisement, or office; or

(3) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(4) for purposes of making a determination as to whether the licensee fits one of the categories listed in subsections (a) or (b) of this section the questions shall be resolved in favor of inclusion of the work as in "association with accounting work."

~~(d) All board rules and all provisions of the Act apply to a certificate or registration holder in retired or permanent disability status.~~

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 July 14, 2005.

TRD-200502886

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 305-7848



CHAPTER 521. FEE SCHEDULE

22 TAC §521.2

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §521.2 concerning Examination Fees.

The proposed repeal of §521.2 will remove a rule that is no longer necessary. The fees shown in the rule are not collected by the Board; therefore the rule is not needed.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the repeal will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be zero.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the repeal will be removal of a rule that is no longer necessary.

The probable economic cost to persons required to comply with the repeal will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on August 26, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because there is no cost to small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act

No other article, statute or code is affected by this proposed repeal.

§521.2. *Examination Fees.*

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 July 14, 2005.

TRD-200502887

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 305-7848



CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION
SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.112

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.112, concerning Mandatory CPE Attendance.

The amendment to §523.112 will further define the term "association with accounting work" and establish a minimum requirement for CPE.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be improved understanding of what activities are considered an "association of accounting work" and establishing a minimum requirement for CPE.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on August 26, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the cost of compliance is marginal.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.112. *Mandatory CPE Attendance.*

A licensee shall complete at least 120 hours of CPE in each three-year period, and a minimum of 20 hours in each one-year period. For all CPE completed after January 1, 2005, except as provided by board rule, this CPE shall be offered by board contracted CPE sponsors. The exception to this requirement is an initial licensee, one who has been certified or registered for less than 12 months.

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

(3) The board may consider granting an exemption from the CPE requirement on a case-by-case basis if:

(A) (No change.)

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor;

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems [data processing]; treasury, finance, or audit; or

(II) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products involving accounting work, including such designation on a business card, letterhead, promotional brochure, advertisement, or office; or

(III) - (IV) (No change.)

(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue CPE hours missed as a result of the exemption subject to a minimum [maximum] of 40 [200] hours. Such CPE hours shall be earned in the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Board Rules and Ethics Course).

(C) - (F) (No change.)

(4) (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 July 14, 2005.

TRD-200502888

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 305-7848



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER T. FAIR PLAN

DIVISION 1. PLAN OF OPERATION

28 TAC §5.9912

The Texas Department of Insurance proposes an amendment to §5.9912, concerning the plan of operation of the Fair Access to Insurance Requirements (FAIR) Plan Association. The Texas FAIR Plan Association was established by Insurance Code Article 21.49A for the purpose of delivering residential property insurance to qualified citizens of Texas in areas determined by the Commissioner of Insurance to be underserved areas. The current Governing Committee, composed of eleven voting members, five of whom represent insurers, four members of the public, and two members who are licensed agents, has requested an amendment to the Plan of Operation to clarify that all members may be reimbursed for actual expenses. The FAIR Plan often has meetings which are not located in the home town of the members and has been reimbursing members for their actual expenses to attend meetings. It has recommended that §5.9912

be amended by adding subsection (o) which provides for the reimbursement of reasonable actual expenses to members of the Governing Committee.

Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Hamilton has also determined that for each of the first five years the amended section is in effect, the public benefits anticipated as a result of the proposed section will be that the pool of qualified persons willing to serve on the Governing Committee of the FAIR Plan will be expanded since it will be clear that members will not have to use personal funds to pay expenses of attending meetings. An expanded pool of qualified persons willing to serve will benefit the FAIR Plan Association and the public as well. The estimated cost per member for reimbursement of actual reasonable expenses is approximately \$470.00 per year. This figure is based on the actual past expenses of members who have incurred costs for hotel accommodations, travel and meals while attending a FAIR Plan Association meeting. The total estimated annual cost for the FAIR Plan Association would be \$5,170 which is based on eleven members and annual reimbursable expenses of \$470 each. The Government Code §2006.001 defines small business and microbusiness in pertinent part as a legal entity, including a corporation, partnership, or sole proprietorship that is formed for the purpose of making a profit. Since the FAIR Plan Association was not formed for the purpose of making a profit, it does not meet the definition, and thus it is not necessary to include a small or micro-business analysis in this proposal.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on August 29, 2005 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, Mail Code 104 PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code Article 21.49A and §36.001. Article 21.49A, §3(a) authorizes the FAIR Plan Governing Committee to propose amendments to the plan of operation and submit them to the Commissioner of Insurance for approval. Article 21.49A charges the Commissioner with the authority to supervise the Association and to approve and adopt by rule the plan of operation developed by the Governing Committee. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following article is affected by this proposal: Insurance Code Article 21.49A

§5.9912. *Governing Committee.*

(a) - (n) (No change.)

(o) Members of the Governing Committee may be reimbursed for their reasonable actual expenses incurred as a result of serving as a member of the Governing Committee. The FAIR Plan Association will establish procedures for reimbursement.

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 July 18, 2005.

TRD-200502914

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 463-6327



TITLE 34. PUBLIC FINANCE

PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 301. RULES OF THE TEXAS STATEWIDE EMERGENCY SERVICES RETIREMENT FUND

34 TAC §§301.1 - 301.12

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

Introduction: The State Board of Trustees of the Texas Statewide Emergency Services Personnel Retirement Fund proposes to repeal 34 Texas Administrative Code §301.1- §301.12 governing the administration of the Texas Statewide Emergency Services Personnel Retirement Fund. The Board proposes this repeal because the Legislature repealed the statutory authority for the rules (Texas Civil Statutes, Article 6243e.3) with the enactment of 79R-SB 522.

Fiscal Note: Kevin Deiters, Program Director, has determined for the first five years that this repeal is in effect, no fiscal implications for state or local government are anticipated from the repeal of these rules.

Public Benefit-Cost Note: Mr. Deiters has also determined that for the first five years that this repeal is in effect the public benefit will be to eliminate obsolete regulations. There is no anticipated economic cost to small businesses or individuals by the repeal of these rules.

Comments: Questions or comments by members of the public on the proposed repeal are solicited. Written questions or comments on the proposal may be submitted to Lisa Ivie Miller, Commissioner, Office of the Fire Fighter Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than August 29, 2005.

Statutory Authority: This repeal is proposed under Title 8, Government Code, Subtitle H Texas Emergency Services Retirement System, which provides the State Board of Trustees with the authority to promulgate rules necessary for the administration of the pension fund.

No other statutes, articles, or codes are affected by the proposed amendment.

§301.1. *Definitions.*

§301.2. *Scope.*

§301.3. *Determination of Costs.*

§301.4. *Revocation and Reduction of Benefits.*

§301.5. *Billings and Annual Reports.*

§301.6. *Local Boards of Trustees.*

§301.7. *Investment Objectives.*

§301.8. *Requests for Rulings.*

§301.9. *General.*

§301.10. *Standard of Conduct for Financial Advisors and Service Providers.*

§301.11. *Qualified Domestic Relations Order.*

§301.12. *Disability.*

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 July 18, 2005.

TRD-200502907

Kevin Deiters

Program Director

Office of the Fire Fighters' Pension Commissioner

Proposed date of adoption: August 30, 2005

For further information, please call: (512) 936-3472



CHAPTER 302. GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §302.1 - 302.5

The State Board of Trustees of the Texas Emergency Services Retirement System proposes new 34 Texas Administrative Code Chapter 302, §§302.1 - 302.5, governing the general provisions relating to the Texas Emergency Services Retirement System.

The new rules will provide the Board and the Office of the Fire Fighters' Pension Commissioner with the authority needed to administer the System. The System provides pension, disability, and death benefits for volunteer fire fighters and EMS personnel in departments that participate in the System. The proposed new rules will identify definitions and provide the Board with the authority to make changes needed to comply with Internal Revenue System regulations. The proposed rules will also allow individuals to reduce or revoke benefits provided by the System.

Kevin Deiters, Program Director, has determined that for the first five years that the new rules are in effect no fiscal implications for state or local government are anticipated from the adoption of the new rules. Failure to adopt the provisions governing pension distributions could threaten the System's qualified status under the Internal Revenue Code.

Mr. Deiters has also determined that for the first five years that the new rules are in effect the public benefit will be to allow members to comply with Internal Revenue Service Regulations regarding pension distributions. The new rules will also allow members to reduce or revoke benefits provided by the System. There is no anticipated economic cost to small businesses or individuals by the adoption of the new rules.

Questions or comments by members of the public on the proposed new rules are solicited. Written questions or comments

on the proposal may be submitted to Lisa Ivie Miller, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than August 29, 2005.

The new rules are proposed under the statutory authority of Title 8, Government Code, Subtitle H Texas Emergency Services Retirement System that was created with the enactment of Senate Bill 522 by the 79th Legislature. The new rules are also proposed to comply with Internal Revenue Service regulations for qualified pension plans.

No other statutes, articles, or codes are affected by the proposed new rules.

§302.1. Definitions.

(a) Unless otherwise specifically provided in this part, the terms and phrases used in Chapters 302, 304, 306, 308 and 310 have the meanings assigned by Government Code, Chapters 861 - 865.

(b) In Chapters 302, 304, 306, 308 and 310, "Texas Local Fire Fighters Retirement Act" means the Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes).

§302.2. Benefit Distributions.

(a) The annual benefit based on the service of a member may not exceed the amount permitted by the Internal Revenue Code of 1986 and related regulations for the appropriate year. If the aggregated benefit otherwise payable under the pension system and any other defined benefit plan maintained by a political subdivision that has contributed to the fund on behalf of the member would otherwise exceed the benefits allowable under federal law, the reduction in benefits must first be applied to the extent possible from the other plan, and only after those reductions, from the fund.

(b) A retirement annuity or benefits to a qualified beneficiary under the pension system may not begin after the deadlines provided under the Internal Revenue Code of 1986 and related regulations.

§302.3. Trustee-to-Trustee Transfer.

The distributee of a rollover distribution may elect, in a manner provided by the pension system, to have the distribution paid directly to an eligible retirement plan specified by the distributee in the form of a direct trustee-to-trustee transfer. The pension system shall develop procedures to implement this section in accordance with the Internal Revenue Code of 1986 and related regulations.

§302.4. Reduction or Revocation of Benefits.

(a) A person entitled to benefits from the pension system may, in a manner determined by the pension system, reduce the amount of the benefits or revoke the right to the benefits. A decision under this section is irrevocable and binding on the person's spouse and dependents, if applicable.

(b) A reduction or revocation under this section applies to all payments that become or would have become due after the date of the waiver. Amounts waived under this section are forfeited to the pension system.

(c) A subsequent cost-of-living adjustment granted under the pension system or a benefit increase granted by a governing body for persons entitled to benefits under the Texas Local Fire Fighters Retirement Act will not be applied to persons who have reduced or revoked their benefits under this section to the extent the benefits are administered by the commissioner.

§302.5. Correction of Errors.

A local board may correct an error in enrollment in membership or computation of qualified service by a letter sent to the commissioner

signed by the chair and secretary of the local board and the administrative head of the participating department, accompanied by a copy of the meeting minutes of the local board showing approval of the change and any applicable past due contributions necessitated by the 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 July 18, 2005.

TRD-200502925

Kevin Deiters

Program Director

Office of the Fire Fighters' Pension Commissioner

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 936-3472



CHAPTER 304. MEMBERSHIP IN THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §304.1, §304.2

The State Board of Trustees of the Texas Emergency Services Retirement System proposes new 34 Texas Administrative Code Chapter 304, §304.1 and §304.2, governing membership in the Texas Emergency Services Retirement System.

The new rules will provide the Board and the Office of the Fire Fighters' Pension Commissioner with the authority needed to administer the System. The System provides pension, disability, and death benefits for volunteer fire fighters and EMS personnel in departments that participate in the System. The proposed new rules identify the responsibilities of departments joining the System and provides for a probationary period for individual members.

Kevin Deiters, Program Director, has determined that for the first five years that the new rules are in effect no fiscal implications for state or local government are anticipated from the adoption of the new rules.

Mr. Deiters has also determined that for the first five years that the public benefit will be to provide a method for volunteer fire fighter and EMS departments to join the System. There is no anticipated economic cost to small businesses or individuals by the adoption of the new rules.

Questions or comments by members of the public on the proposed rules are solicited. Written questions or comments on the proposal may be submitted to Lisa Ivie Miller, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than August 29, 2005.

The new rules are proposed under the statutory authority of Title 8, Government Code, Subtitle H Texas Emergency Services Retirement System that was created with the enactment of Senate Bill 522 by the 79th Legislature.

No other statutes, articles, or codes are affected by the proposed new rules.

§304.1. Participation by Department.

(a) The governing body of a department that performs emergency services may, in the manner provided for taking official action by the body, elect to participate in the pension system. A governing

body shall notify the commissioner as soon as practicable of an election made under this section. An election made under this section is irrevocable except as provided by §862.001, Government Code.

(b) The effective date of a department's participation in the pension system must be the first day of a month but may pre-date the date of the election as determined by contract between the governing body and the pension system.

(c) A department may purchase prior service credit under §303.1 of this title under the terms of that section for service performed before the date of the election to participate in the pension system but is not liable for the payment of benefits because of any disability or death that occurred before that date.

§304.2. Probationary Period for Membership.

A participating department may have a probationary period not to exceed six months for new personnel during which the department is not required to pay contributions for the persons on probation. When the department begins paying contributions for the persons, whether or not the probationary period has ended for other purposes, individual membership in the pension system begins.

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 July 18, 2005.

TRD-200502926

Kevin Deiters

Program Director

Office of the Fire Fighters' Pension Commissioner

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 936-3472



CHAPTER 306. CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §306.1

The State Board of Trustees of the Texas Emergency Services Retirement System proposes new 34 Texas Administrative Code Chapter 306, §306.1, governing creditable service for members of the Texas Emergency Services Retirement System.

The new rule will provide the Board and the Office of the Fire Fighters' Pension Commissioner with the authority needed to administer the System. The System provides pension, disability, and death benefits for volunteer fire fighters and EMS personnel in departments that participate in the System. The proposed new rule will allow departments to purchase service credit in the System for service performed by members before entry into the System. The new rule sets the cost to finance the prior service at the actuarial assumed rate of investment return and limits the System provided financing to 10 years.

Kevin Deiters, Program Director, has determined that for the first five years that this new rule is in effect the fiscal implication for state government is to reduce actuarial losses to the System. Previous Board rules provided free financing of the purchase of prior service for a period of three years. Although the new rule will result in increased costs to those departments that purchase prior service using System financing, the new rule could provide

cost-savings to municipal volunteer fire departments under the Texas Local Fire Fighter Retirement Act by eliminating the requirement that departments purchase prior service credit for active volunteer firefighters. Under the proposed rule, departments will still have the ability to purchase prior service (either by lump sum payment or financed by the System) for active members, but it will no longer be required as a condition of entry into the system.

Mr. Deiters has also determined that for the first five years that the public benefit will be to provide a method for departments to purchase prior service for volunteer fire fighter and EMS personnel. There is no anticipated economic cost to small businesses or individuals by the adoption of the new rule.

Questions or comments by members of the public on the new rule are solicited. Written questions or comments on the proposal may be submitted to Lisa Ivie Miller, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than August 29, 2005.

The new rule is proposed under the statutory authority of Title 8, Government Code, Subtitle H Texas Emergency Services Retirement System that was created with the enactment of Senate Bill 522 by the 79th Legislature.

No other statutes, articles, or codes are affected by the proposed new rule.

§306.1. Prior Service Credit for Members of Participating Departments.

(a) A department that elects to participate in the pension system may, on the effective date of participation or later, purchase service credit for service performed by the persons who become members on the effective date of departmental participation, or whose participation begins or resumes on or after that date.

(b) The pension system shall grant prior service credit under this section if the department agrees in writing to finance the prior service credit by a lump-sum payment or within a period not to exceed 10 years from the effective date.

(c) The cost to finance the purchase of prior service credit is based upon to the actuarially assumed rate of investment return on fund assets at the time payment for the credit begins.

(d) The commissioner shall furnish to each participating department that agrees to purchase prior service credit a record of member prior service to be completed and returned to the commissioner showing the amount of prior service performed by each member of the department. The record must be signed by the chair and secretary of the local board and the administrative head of the department and be accompanied by a copy of the minutes of the local board showing approval of the amounts of prior service credit given the members.

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 July 18, 2005.

TRD-200502927

Kevin Deiters

Program Director

Office of the Fire Fighters' Pension Commissioner

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 936-3472



CHAPTER 308. BENEFITS FROM THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §§308.1 - 308.4

The State Board of Trustees of the Texas Emergency Services Retirement System proposes new 34 Texas Administrative Code Chapter 308, §§308.1 - 308.4, governing benefits from the Texas Emergency Services Retirement System.

The new rules will provide the Board and the Office of the Fire Fighters' Pension Commissioner with the authority needed to administer the System. The new rules identify the eligibility requirements and annuity payment amounts for pension, disability, and death benefits for volunteer fire fighters and EMS personnel in departments that participate in the System.

Kevin Deiters, Program Director, has determined that for the first five years that the new rules are in effect the fiscal implication for state government is to reduce actuarial losses to the System incurred by extended disability payments. The proposed rules establish a formal review process for members receiving disability payments over two years. There is no fiscal implication for local government as a result of the adoption of the new rules.

Mr. Deiters has also determined that for the first five years that the public benefit will be to reduce the potential of fraud in the provision of disability benefits. There is no anticipated economic cost to small businesses or individuals by the adoption of the new rules.

Questions or comments by members of the public on the new rules are solicited. Written questions or comments on the proposal may be submitted to Lisa Ivie Miller, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than August 29, 2005.

The new rules are proposed under the statutory authority of Title 8, Government Code, Subtitle H Texas Emergency Services Retirement System that was created with the enactment of Senate Bill 522 by the 79th Legislature.

No other statutes, articles, or codes are affected by the proposed new rules.

§308.1. Eligibility for Retirement Annuity.

(a) A member is eligible to retire and receive a service retirement annuity with full benefits from the pension system when the member has at least 15 years of qualified service credited in the system and has attained the age of 55.

(b) Partial vesting to receive a service retirement annuity accrues at the following rates:

(1) 25 percent after the first five years of credited qualified service;

(2) five percent a year for the next five years of credited qualified service; and

(3) 10 percent a year for the next five years of credited qualified service.

(c) Vested retirement benefits, including partially vested benefits, are nonforfeitable. A retirement benefit also becomes nonforfeitable when a member attains normal retirement age or, to the extent funded, on the termination or partial termination of the pension system or the complete discontinuance of contributions to the pension system.

§308.2. Service Retirement Annuity.

(a) In this section, normal retirement age is the later of the month a member completes 15 years of credited qualified service or attains the age of 55, and early retirement age is the age of 55.

(b) A service retirement annuity is payable in equal monthly installments to a member who terminates service after attaining early retirement age or normal retirement age, subject to the vesting requirements of §308.1 of this title.

(c) Except as otherwise provided by this section, the monthly service retirement annuity is equal to six times the governing body's average monthly contribution during the retiring member's term of qualified service.

(d) For credited qualified service in excess of 15 years, a retiring member is entitled to receive an additional seven percent of the annuity compounded annually and adjusted for days or months of credited qualified service that constitute less than a year.

§308.3. Disability Retirement Annuity.

(a) Except as otherwise provided by §864.004 and §865.006, Government Code, and this section, a member whose disability results from performing emergency service duties is entitled to a monthly annuity during the period of the disability in an amount equal to \$300 plus \$50 for every \$12 increase in contributions paid by the governing body for which the person was performing emergency services at the time of the disability.

(b) An increase in contributions by a governing body after the payment of a monthly annuity begins does not increase the amount of the annuity.

(c) Disability benefits are prorated for portions of months during which a person is disabled.

(d) A local board shall report to the commissioner, in a manner provided by the pension system, a determination of temporary disability not later than the 45th day after the date the disability begins.

(e) A person receiving temporary disability benefits who does not apply to the Social Security Administration for certification as permanently disabled before the second anniversary of the date of determination of temporary disability or, if the person does not participate in the social security program, to a medical board selected by the state board for alternative certification is subject to suspension of disability benefit payments pending certification by the Social Security Administration or the medical board within the period provided by §864.004, Government Code.

§308.4. Death Benefits.

(a) The beneficiary of a member who dies as a result of performing emergency service duties is entitled to a lump-sum benefit of \$60,000.

(b) The beneficiary of a deceased member whose death did not result from the performance of emergency service duties, including a member whose death resulted from the performance of active military duty, is entitled to:

(1) the amount contributed to the fund on the decedent's behalf; or

(2) the sum that would have been contributed on the decedent's behalf from whatever source at the end of the period required for full service retirement benefits.

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 July 18, 2005.

TRD-200502928
Kevin Deiters
Program Director
Office of the Fire Fighters' Pension Commissioner
Earliest possible date of adoption: August 28, 2005
For further information, please call: (512) 936-3472



CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §§310.1 - 310.9

The State Board of Trustees of the Texas Emergency Services Retirement System proposes new 34 Texas Administrative Code Chapter 310, §§310.1 - 310.9, governing the administration of the Texas Emergency Services Retirement System.

The new rules will provide the Board and the Office of the Fire Fighters' Pension Commissioner with the authority needed to administer the System. The new rules identify the administrative requirements of the State Board of Trustees and the Local Board of Trustees. The new rules provide the Commissioner with the authority to request periodic reports and to access administrative penalties for the failure to file those reports in a timely manner.

Under the proposed new rules, the minimum pension contribution rate will increase by \$4 per month per member in each of the years following September 1, 2006. This is the first increase in the statewide minimum pension contribution rate since the pension fund was created in 1977. The current minimum contribution rate is \$12 per member per month and this minimum rate has lost over two-thirds of its purchasing power to inflation since 1977.

Kevin Deiters, Program Director, has determined that for the first five years that the new rules are in effect the fiscal implication for state government is to increase future state-mandated pension contributions by \$1.32 per month for each member of a participating department that contributes at the minimum contribution rate after September 1, 2006. The contribution rate increase will increase annual contribution amounts for departments participating at the minimum contribution rate by \$4.00 per month for each member after September 1, 2006.

Mr. Deiters has determined that the adoption of the higher contribution rates will allow the System to provide qualified firefighters and emergency services personnel with higher pension, disability, and death benefits. The public benefit anticipated as a result of the adoption of the new rules will be to provide participating departments with improved benefits to recruit volunteer fire fighters and emergency services personnel to protect local communities. There is no anticipated economic cost to small businesses or individuals by the adoption of the new rules.

Questions or comments by members of the public on the new rules are solicited. Written questions or comments on the proposal may be submitted to Lisa Ivie Miller, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than August 29, 2005.

The new rules are proposed under the statutory authority of Title 8, Government Code, Subtitle H Texas Emergency Services Retirement System that was created with the enactment of Senate Bill 522 by the 79th Legislature.

No other statutes, articles, or codes are affected by the proposed new rules.

§310.1. Officers of State Board.

The trustees of the state board annually shall elect a chair, vice chair, and secretary at the last regularly scheduled board meeting in a state fiscal year. The terms of the officers take effect the following September 1.

§310.2. Additional Duties of State Board.

(a) The state board shall formulate the basic and general policies and the rules consistent with the purposes, policies, and principles, and standards stated in statutes administered by the board.

(b) Periodically, the state board shall adopt and revise written investment objectives after consultation with the pension system's investment counselor.

§310.3. Review of Actuarial Services.

The state board shall at least once every four years issue a request for proposal to perform services as the pension system's actuary. After review of the proposals, the state board shall select a new actuary or redesignate the current actuary as advisable in the board's fiduciary capacity.

§310.4. Standard of Conduct for Financial Advisors and Service Providers.

(a) In accordance with §2263.004, Government Code, financial advisors and service providers that directly or indirectly receive more than \$10,000 in compensation from the pension system during a state fiscal year and that provide financial services to the commissioner, the state board, or individual members of the state board regarding the investment or management of the fund's assets shall comply with all applicable standards of conduct with which they are required to comply in accordance with federal or state law, rules, or regulations, relevant trade or professional associations, and the state board's investment policy.

(b) A financial advisor or service provider must agree to comply with these standards of conduct as a prerequisite to establishing and continuing any business relationship regarding the fund.

(c) The state board is authorized to terminate any business or contractual relationship with a financial advisor or service provider that the board has determined to have failed to comply with an applicable standard of conduct.

§310.5. Local Board of Trustees.

(a) A local board annually shall elect a chair, vice chair and secretary.

(b) A meeting of a local board is subject to the Texas opening meetings law (Chapter 551, Government Code).

§310.6. Local Contributions.

(a) Except as otherwise provided by this section, each participating department shall contribute at least \$12 for each month or a portion of a month a member performs emergency services for the department. A participating department may elect to make contributions at a greater rate by notifying the commissioner of the rate. Contributions are payable for each month or portion of a month of service regardless of whether the member receives a year of qualified service. Contributions are payable as provided by §865.014, Government Code, and §310.8 of this title.

(b) The minimum contribution rate for a department that begins participation in the pension system after September 1, 2005, is \$36.

(c) The minimum monthly contribution rate for a department participating in the pension system on September 1, 2005, is subject to increase according to the following schedule:

- (1) on September 1, 2006, \$16;
- (2) on September 1, 2007, \$20;
- (3) on September 1, 2008, \$24;
- (4) on September 1, 2009, \$28;
- (5) on September 1, 2010, \$32; and
- (6) on September 1, 2011, \$36.

(d) Contributions are payable during a period of temporary disability or when leave is taken under the Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.), but are not payable when a member is performing active military duty, although the member receives credit for qualified service when performing active military duty.

(e) Contributions required under this section are not considered compensation to the members for whom they are made.

§310.7. Administration of Local Fire Fighter Pension Benefits.

A municipality may contract with the commissioner for the administration of pensions payable under the Texas Local Fire Fighters Retirement Act. A contract under this section must include an administrative fee to recover the cost of administering the benefits. Administrative fees collected under this section shall be deposited in the fund.

§310.8. Billings.

(a) The commissioner shall bill governing bodies of participating departments and governing bodies of municipalities for which the commissioner is administering pensions under the Texas Local Fire Fighters Retirement Act quarterly on the last business day of November, February, May, and August.

(b) Each billing shall include, as appropriate, charges for:

- (1) monthly contributions for participating members;
- (2) prior service contributions;
- (3) any administrative fee for administering pensions under the Texas Local Fire Fighters Retirement Act;
- (4) late-payment interest charges; and
- (5) unpaid administrative penalties.

(c) At least 30 days before the last day of each quarter, the commissioner shall send to the chair of the local board of each participating department a pension roster report that includes the name of each person who performs emergency services for the department and is identified as a member of the pension system.

(d) The chair of the local board or the administrative head of the department shall verify the accuracy of the report, make needed changes in the roster, and return the report to the commissioner not later than the fifth day before the last day of the quarter.

(e) Payments under a billing issued under this section become due within 30 days of the invoice date. Late payments accrue interest at the current actuarially assumed rate of investment return on fund assets.

§310.9. Periodic Reports; Administrative Penalties.

(a) The commissioner shall require periodic reports of local boards. The commissioner shall specify the content to ensure the ability of the state board and the commissioner to administer the pension system in a manner that uses fund assets in a manner required by statute. Each report must identify emergencies to which the department responded during the reporting period.

(b) A report required in accordance with this section is late if it is not received by the commissioner before the end of the month following the last month required to be covered in the report.

(c) An administrative penalty is imposed on each late periodic report required in accordance with this section. The penalty is \$500 for each violation, except that a surcharge of \$100 will be added to the penalty for each month the report remains late.

(d) The commissioner may waive an administrative penalty under this section if the commissioner determines, after a written request by a local board for a waiver, that the delay in reporting was beyond the control of the entities responsible for preparing and submitting the report and was not the result of neglect, indifference, or lack of diligence.

(e) A local board may appeal the commissioner's denial of a waiver to the state board to be determined at the board's next scheduled meeting. On appeal to the state board, the board is subject to the same standard for determination as the commissioner but may in its discretion accept additional information from the local board.

(f) A determination by the state board on appeal under this section may not be appealed to a court and is not subject to any other legal 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 July 18, 2005.

TRD-200502929

Kevin Deiters

Program Director

Office of the Fire Fighters' Pension Commissioner

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 936-3472



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety proposes amendments to §4.1, concerning Regulations Governing Hazardous Materials. Amendment to §4.1 is necessary in order to ensure that the Federal Hazardous Material Regulations, incorporated by reference in the section, reflects all amendments and interpretations issued through July 1, 2005.

A second amendment to the section is necessary in order to correct an inaccuracy listed in the current rule.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will

be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendments are proposed pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

Texas Government Code, §411.018 and Texas Transportation Code, §644.051 are affected by this proposal.

§4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through July~~[April]~~ 1, 2005. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through July~~[April]~~ 1, 2005.

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6);

(B) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(C) interstate or foreign commerce will include all movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) department means the Texas Department of Public Safety;

(E) regional highway administrator means the director of the Texas Department of Public Safety or the designee of the director;

(F) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(G) private carrier means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who transports by commercial motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of commerce.

(2) All references in Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180 made to other modes of transportation, other than by motor vehicles operated on

streets and highways of this state, will be excluded and not adopted by this department.

(3) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm. The usage of non- specification farm tank trailers by motor carriers to transport anhydrous ammonia must be in compliance with Title 49, Code of Federal Regulations, §173.315(m).

(4) The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, §171.15 and §171.16 for shipments of hazardous materials by highway is adopted by the department.

(5) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to an intrastate motor carrier transporting a flammable liquid petroleum product in a cargo tank. The usage of non- specification cargo tanks by motor carriers for the intrastate transportation of flammable liquid petroleum products must be in compliance with Title 49, Code of Federal Regulations, §173.8.

(6) Regulations and exceptions adopted herein are applicable to all drivers and vehicles transporting hazardous materials in interstate, foreign, or intrastate commerce.

(7) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(8) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code, Chapter 644, and §4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties).

(9) A peace officer certified, in accordance with §4.13 of this title (relating to Authority to Enforce, Training and Certificate Requirements), to enforce the Federal Hazardous Material Regulations, as adopted in this section, may declare a vehicle out-of-service using the North American Standard Hazardous Materials Out-of-Service~~[Out of State]~~ Criteria as a guideline.

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 July 12, 2005.

TRD-200502844

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-2135



SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §§4.11, 4.13, 4.16

The Texas Department of Public Safety proposes amendments to §§4.11, 4.13, and 4.16 concerning Regulations Governing Transportation Safety. The amendment to §4.11 updates the rule so that it reflects July 1, 2005 in subsection (a). The amendment is necessary to ensure that the Federal Motor Carrier Safety

Regulations, incorporated by reference in the section, reflects all amendments and interpretations issued through that particular date.

Amendments to §4.13 are necessary in order to clarify both the initial and recertification requirements for peace officers certified under this section.

Amendments to §4.16 are necessary in order to authorize the department to accept payments of administrative penalties by electronic funds transfer or credit card, and to specify procedures and fees for accepting these payment transactions.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference. The amendment to §4.16 is also proposed pursuant to Texas Government Code, §411.0135, which authorizes the department to adopt rules regulating the method of payment of fees and charges.

Texas Transportation Code, §644.051 and Texas Government Code, §411.0135 are affected by this proposal.

§4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through July [April] 1, 2005. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through July [April] 1, 2005. The rules adopted herein are to ensure that:

- (1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;
- (2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;
- (3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely; and,
- (4) the minimum levels of financial responsibility required to be maintained by motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce.

(b) Terms. Certain terms, when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

- (1) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6);
- (2) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;
- (3) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;
- (4) department means the Texas Department of Public Safety;
- (5) director means the director of the Texas Department of Public Safety or the designee of the director;
- (6) regional highway administrator means the director of the Texas Department of Public Safety;
- (7) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture commodities, farm machinery, and farm supplies to or from a farm or ranch;
- (8) commercial motor vehicle has the meaning assigned by Texas Transportation Code, §548.001(1) if operated intrastate; commercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, Part 390.5 if operated interstate;
- (9) foreign commercial motor vehicle has the meaning assigned by Texas Transportation Code, §648.001;
- (10) agricultural commodity is defined as an agricultural, horticultural, viticultural, silvicultural, or vegetable product, bees and honey, planting seed, cottonseed, rice, livestock or a livestock product, or poultry or a poultry product that is produced in this state, either in its natural form or as processed by the producer, including wood chips. The term does not include a product which has been stored in a facility not owned by its producer;
- (11) planting and harvesting seasons are defined as January 1 to December 31; and
- (12) producer is defined as a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper.

(c) Applicability.

- (1) The regulations shall be applicable to the following vehicles:
 - (A) a vehicle or combination of vehicles with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 26,000 pounds when operating intrastate;
 - (B) a farm vehicle or combination of farm vehicles with an actual gross weight, a registered gross weight, or a gross weight rating of 48,000 pounds or more when operating intrastate;
 - (C) a vehicle designed or used to transport more than 15 passengers, including the driver; and
 - (D) a vehicle transporting hazardous material requiring a placard.
 - (E) a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas

Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(F) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.

(G) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

(2) The regulations contained in Title 49, Code of Federal Regulations, Part 392.9a, and all interpretations thereto, are applicable to motor carriers operating in intrastate commerce and to for-hire interstate motor carriers exempt from economic regulation. The term "registration" as used in Title 49, Code of Federal Regulations, Part 392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643, for vehicles operating in intrastate commerce, or Texas Transportation Code, Chapters 643 or 645, for for-hire interstate motor carriers exempt from economic regulation. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapters 643 or 645, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, Part 392.9a may request a review under §4.18 of this chapter. All costs associated with the towing and storage of a vehicle and load declared out-of-service under subsection (c)(2) shall be the responsibility of the motor carrier and not the department or the State of Texas.

(3) All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393 and 395 - 397, and all interpretations thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(4) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

§4.13. Authority to Enforce, Training and Certificate Requirements.

(a) Authority to Enforce.

(1) An officer of the department may stop, enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(2) A non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may stop, enter or detain at a fixed-site facility, or at a port of entry, a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(3) An officer of the department or a non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(4) Municipal police officers from any of the following Texas cities meeting the training and certification requirements contained in subsection (b) of this section and certified by the department may stop, enter or detain on a highway or at a port of entry within the municipality a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a municipality with a population of 100,000 or more;

(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of two million or more;

(C) a municipality any part of which is located in a county bordering the United Mexican States; or

(D) a municipality with a population of less than 25,000, any part of which is located in a county with a population of 2.4 million and that contains or is adjacent to an international port.

(5) A sheriff, or deputy sheriff from any of the following Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a county bordering the United Mexican States, or

(B) a county with a population of 2.2 million or more.

(6) A certified peace officer from an authorized municipality or county may prohibit the further operation of a vehicle on a highway or at a port of entry within the municipality or county if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(b) Training and Certification Requirements.

(1) Minimum standards. Certain peace officers from the municipalities and counties specified in subsection (a) of this section before being certified to enforce this article must meet the following standards:

(A) successfully complete the North American Standard Roadside Inspection Course; and

(B) participate in an on-the-job training program following this [each] course with a certified officer and perform a minimum of 32 [30] level one inspections.

(2) Hazardous materials. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the [a Basic] Hazardous Materials Inspection Course; and

(C) participate in an on-the-job training program following this [each] course with a certified officer and perform a minimum of 16 level one inspections on vehicles containing non-bulk quantities of hazardous materials.

(3) Cargo Tank Specification. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Cargo Tank Specification requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the [a Basic] Hazardous Materials Inspection Course;

(C) successfully complete the [a] Cargo Tank Inspection Course; and

(D) participate in an on-the-job training program following this [each] course with a certified officer and perform a minimum of 16 level one inspections on vehicles transporting hazardous materials in cargo tanks.

(4) Other Bulk Packaging. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Other Bulk Packaging requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course;

(C) successfully complete the Other Bulk Packaging Course; and

(D) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles containing hazardous materials in other bulk packaging.

(5) ~~[(4)]~~ Passenger Vehicle [Motor Coach]. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the passenger vehicle [motor coach] requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Passenger Vehicle [a Motor Coach] Inspection Course; and

(C) participate in an on-the-job training program following this [each] course with a certified officer and perform a minimum of 8 level I inspections on passenger vehicles such as motor coaches/buses.

(6) ~~[(5)]~~ Training provided by the department. When the training is provided by the Texas Department of Public Safety, the department shall collect fees in an amount sufficient to recover from municipalities and counties the cost of certifying its peace officers. The fees shall include:

(A) the per diem costs of the instructors established in accordance with the Appropriations Act regarding in-state travel;

(B) the travel costs of the instructors to and from the training site;

(C) all course fees charged to the department;

(D) all costs of supplies; and

(E) the cost of the training facility, if applicable.

(7) ~~[(6)]~~ Training provided by other training entities. A public or private entity desiring to train police officers in the enforcement of the Federal Motor Carrier Safety Regulations must:

(A) submit a schedule of the courses to be instructed;

(B) submit an outline of the subject matter in each course;

(C) submit a list of the instructors and their qualifications to be used in the training course;

(D) submit a copy of the examination;

(E) submit an estimate of the cost of the course;

(F) receive approval from the director prior to providing the training course;

(G) provide a list of all peace officers attending the training course, including the peace officer's name, rank, agency, social security number, dates of the course, and the examination score; and

(H) receive from each peace officer, municipality, or county the cost of providing the training course(s).

(c) Maintaining Certification.

(1) To maintain certification to conduct inspections and enforce the federal safety regulations, a peace officer must:

(A) Successfully complete the required annual certification training; and

(B) Perform a minimum of 32 Level I ~~[or Level V]~~ inspections per calendar year.

(C) If the officer is certified to perform hazardous materials inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles containing non-bulk quantities of hazardous materials.

(D) If the officer is certified to perform cargo tank [tank/bulk packaging] inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles transporting hazardous materials in cargo tanks.

(E) If the officer is certified to perform other bulk packaging inspections, at least eight of the inspections (Levels I, II or V) shall be conducted on vehicles transporting hazardous materials in other bulk packaging.

(F) ~~[(E)]~~ If the officer is certified to perform passenger vehicle [motor coach/bus] inspections, at least eight of the inspections (Levels I or V) shall be conducted on passenger vehicles such as motor coaches/buses.

(2) In the event an officer does not meet the requirements of subsection (c) of this section, his or her certification shall be suspended.

(3) To be recertified, after suspension, an officer shall pass the applicable examinations which may include the North American Standard Roadside Inspection, the ~~[General]~~ Hazardous Materials Inspection Course, the Cargo Tank [Tank/Bulk Packaging] Inspection Course, the Other Bulk Packaging Inspection Course, and/or the Passenger Vehicle [Motor Coach/Bus] Inspection Course and repeat the specified number of inspections with a certified officer.

(4) Any officer failing any examination, or failing to successfully demonstrate proficiency in conducting inspections after allowing any certification to lapse will be required to repeat the entire training process as outlined in subsection (b) of this section.

§4.16. Administrative Penalties, Payment, Collection and Settlement of Penalties.

(a) Administrative Penalties.

(1) The compliance review may result in the initiation of an enforcement action based upon the number and degree of seriousness of the violations discovered during the review as well as those factors listed in Title 49, Code of Federal Regulations, Part 385.7. As a result of the enforcement action, the department may impose an administrative penalty against a motor carrier who violates a provision of the Texas Transportation Code, Title 7, Subtitle B, Chapter 522 (relating to Commercial Driver's License), Subtitle C, Chapters 541 - 600 (relating to the Rules of the Road), and Subtitle F, Chapter 644 (relating to Commercial Motor Vehicles), including any amendments not codified

in the Texas Transportation Code. Each of these provisions relates to the safe operation of a commercial motor vehicle under Texas Transportation Code, §644.153(b).

(2) The department shall have discretion in determining the appropriate amount of the administrative penalty assessed for each violation, and adopts the Federal Uniform Fine Assessment Program as a method of determining penalty assessment. A penalty under this section may not exceed the maximum penalty provided for a violation of a similar federal safety regulation.

(3) The amount of the administrative penalty shall be determined by taking into account the following factors:

(A) For violations other than those under the hazardous material regulations:

- (i) nature of the violation;
- (ii) circumstances of the violation;
- (iii) extent of the violation;
- (iv) gravity of the violation;
- (v) degree of culpability;
- (vi) history of prior offenses;
- (vii) ability to pay;
- (viii) the amount necessary to deter future viola-

tions;

(ix) effect on ability to continue to do business; and
(x) such other matters as justice and public safety may require.

(B) For hazardous material violations, the factors detailed in paragraph (3)(A) of this subsection, are considered in addition to the following factors:

- (i) any good faith effort to comply with the applicable requirements; and
- (ii) any economic benefit resulting from the violation.

(4) The department will send a Notice of Claim to the person(s), Firm, or business in violation of this subchapter by certified mail, return receipt requested, by personal service, or another manner of delivery that records the receipt of the notice by the person responsible requiring a response within 20 business days. The notice will contain the following language in bold, large face type: "FAILURE TO PAY THIS CLAIM OR RESPOND, AS SPECIFIED IN THE NOTICE OF CLAIM, WITHIN 20 BUSINESS DAYS WILL RESULT IN THIS NOTICE OF CLAIM BEING DEEMED A 'FINAL DEPARTMENT DECISION.' A PERSON WHO IS SUBJECT TO AN ADMINISTRATIVE PENALTY IMPOSED BY THE DEPARTMENT UNDER TEXAS TRANSPORTATION CODE, §644.153 IS REQUIRED TO PAY THE ADMINISTRATIVE PENALTIES OR RESPOND TO THE DEPARTMENT'S NOTICE OF CLAIM. A PERSON WHO FAILS TO PAY, OR BECOMES DELINQUENT IN THE PAYMENT OF THE ADMINISTRATIVE PENALTIES IMPOSED BY THE DEPARTMENT UNDER TEXAS TRANSPORTATION CODE, §644.153 SHALL NOT OPERATE OR DIRECT THE OPERATION OF A COMMERCIAL MOTOR VEHICLE ON THE HIGHWAYS OF THIS STATE UNTIL SUCH TIME AS THE ADMINISTRATIVE PENALTIES HAVE BEEN REMITTED TO THE DEPARTMENT."

(b) Payment, Collection and Settlement of Administrative Penalty.

(1) Payment. A person who is subject to an administrative penalty imposed by the department as authorized by Texas Transportation Code §644.153(c) is required to pay the administrative penalty. If payment of costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state has been ordered, any payment of less than the full amount owed will be applied first to the costs, fees, expenses and attorney's fees, then the balance of the payment, if any, will be applied to the administrative penalty. The administrative penalty may be paid through one of the following options:

(A) Full Payment. Full payment of the administrative penalty in the form of a check, cashier's check, or money order made payable to the Department of Public Safety shall be submitted to the Texas Department of Public Safety, Attn: Motor Carrier Bureau, MSC 0522, 6200 Guadalupe, Building P, Austin, Texas 78752-4019. The department may allow payments to be made by electronic funds transfer or valid credit card issued by a financial institution chartered by a state or the federal government or by a nationally recognized credit organization approved by the department.

(i) The department may assess a discount, convenience, or service charge for a payment transaction for electronic funds transfers or credit card payments in an amount that will cover the direct costs to the department for accepting that payment.

(ii) The department may assess a service charge of \$30 for a payment transaction that is dishonored or refused for lack of funds or insufficient funds.

(iii) Any charge added to an administrative penalty under paragraph (1)(A)(i) and (1)(A)(ii) of this subsection must be paid in full, along with the administrative penalty. The department's remedies, including issuing and continuing an impoundment order, apply to the charges as well as the administrative penalty.

(B) Installment Payments.

(i) A person(s), firm, or business may, upon approval of the director or the director's designee, be allowed to make installment payments of an administrative penalty, costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state upon submission of adequate proof of inability to pay the full amount of the claim. An application shall be submitted on a form approved by the department.

(ii) The person(s), firm, or business requesting the installment agreement must submit adequate documentation to support the request and make all relevant financial records of the person(s), firm, or business available to the department for inspection and verification.

(iii) In the event of a default of the installment agreement by the person(s), firm, or business, then the remaining balance of the installment agreement will be due immediately.

(iv) Upon default under an installment agreement, or failure to respond to the notice of claim within 20 business days, the person(s), firm, or business is no longer eligible for installment payments.

(v) Installment payments will be in the form, and subject to service charges, described in paragraph (1)(A) of this subsection.

(2) Non-Payment of Administrative Penalty. A person who fails to pay, reverses an electronic funds transfer payment or credit card payment, or otherwise [øø] becomes delinquent in the payment

of the administrative penalty imposed by the department as authorized by Texas Transportation Code, §644.153(c) shall not operate or direct the operation of a commercial motor vehicle on the highways of this state until such time as the administrative penalty has been remitted to the department. The department will make every effort to collect an administrative penalty once an enforcement action has been deemed as a Final Departmental Decision, including referring the administrative penalty to the Office of the Attorney General, or issuing an impoundment Order.

(A) Issuance of an Impoundment Order. Pursuant to Texas Transportation Code, §644.153(o) - (s), the department will issue an impoundment order for the impoundment of any commercial motor vehicle that is operated or directed by the person(s), firm, or business that fails to pay an administrative penalty issued under this subchapter.

(B) Timing and Content of Impoundment Order. The department shall issue an Impoundment Order if the person(s), firm, or business fails to respond as specified to the Notice of Claim within 20 business days, or becomes delinquent in the payment of the full amount under subsection (b)(1)(A) of this section or any installment payments under subsection (b)(1)(B) of this section when they become due. The Impoundment Order will contain the following information:

(i) Motor Carrier's name, address, city, zip code and telephone number;

(ii) The motor carrier's Texas Department of Transportation, United States Department of Transportation, or Motor Carrier number, if any;

(iii) The amount of delinquent penalty assessment;

(iv) The date the Impoundment Order was issued;

(v) A contact number for the Motor Carrier Bureau;

(vi) Notice that impoundment will be lifted upon receipt of full payment of the administrative penalty at the Motor Carrier Bureau or the designated Commercial Vehicle Enforcement employee as described in paragraph (5)(C)(i) or (ii) of this subsection; and,

(vii) In bold, conspicuous letters, notice that the carrier is responsible for all costs of storage of the vehicle and its cargo, and towing.

(3) Prior to impounding any vehicle, the trooper shall verify the Impoundment Order is still valid. Verification can only be made by the Manager of the Motor Carrier Bureau or the Manager's designee during regular business hours, or via electronic inquiry into the Motor Carrier Bureau's Vehicle Impoundment Database after regular business hours. If a trooper is unable to verify the Impoundment Order is in force, then the vehicle shall not be impounded.

(4) Once a vehicle is impounded, the trooper impounding the vehicle shall immediately ensure the motor carrier is notified of impoundment of the vehicle. The trooper will inform the motor carrier of the name, location, and telephone number of the vehicle storage facility where the vehicle is impounded, notice the vehicle will not be released until the administrative penalty has been paid, and a contact number for the Motor Carrier Bureau. When a vehicle is impounded after regular business hours, the trooper will notify the Motor Carrier Bureau as soon as possible but not later than the next regular business day.

(5) Release of Impounded Vehicles.

(A) To cancel the Impoundment Order and to release a vehicle from impoundment, the motor carrier shall pay the administrative penalty in full, including costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state.

(B) The payment of the administrative penalty must be for the full amount. The payment must be made by cashier's check or money order payable to the Texas Department of Public Safety.

(C) The payment can be made in one of two ways only:

(i) by sending it to the following address as indicated: Texas Department of Public Safety, Motor Carrier Bureau, MSC 0522, 6200 Guadalupe, Bldg. P, Austin, Texas 78752-4019, Attn: Accounting Clerk, Impoundment Notice; or

(ii) directly to the trooper at the time of the actual impoundment or to any Commercial Vehicle Enforcement employee at any department regional, district or sub-district office. If payment is made on an impounded vehicle after regular business hours, the trooper will notify the Motor Carrier Bureau as soon as possible but not later than the next regular business day.

(D) The impounded vehicle will be released and the impoundment order will be cancelled only upon receipt of payment as specified under paragraph (5)(C)(i) or (ii) of this subsection.

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 July 12, 2005.

TRD-200502845

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-2135

◆ ◆ ◆
CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER O. FEES

37 TAC §35.233

The Texas Department of Public Safety proposes new §35.233, concerning Subscription Fee for Employee Information Updates. Specifically, the new section provides a mechanism for the payment of a subscription fee for online employee information updates. This fee is in addition to the fee charged for the employee information updates. The Texas Online Authority has determined that the \$2.00 fee is reasonable.

Oscar Ybarra, Chief of Finance has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a mechanism to collect a subscription fee for online employee information updates under Chapter 1702 of the Texas Occupations Code. The fee will allow online employee information updates to be submitted by the public via the Internet using the Texas Online system. There is no anticipated adverse economic cost to small businesses, or micro-businesses. The cost to individuals who are required to comply with the rule as proposed will be the \$2.00 subscription fee.

Comments on the proposal may be submitted to Cliff Grumbles, Manager, Private Security Bureau, Texas Department of Public Safety, Regulatory Licensing Service, P.O. Box 4143, MSC-0241, Austin, Texas 78765-4143, (512) 424-7711.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, Chapter 1702, and Government Code, §2054.252(g), which allows the increase of fees by the Texas Online Authority.

Texas Government Code, §411.004(3); Texas Occupations Code, Chapter 1702, and Government Code, §2054.252(g) are affected by this proposal.

§35.233. Subscription Fee for Employee Information Updates.

Each individual registrant or commissioned security officer shall pay a \$2.00 fee for an employee information update. This fee is in addition to the employee information update fee.

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 July 12, 2005.

TRD-200502846

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-2135



PART 3. TEXAS YOUTH COMMISSION

CHAPTER 87. TREATMENT

SUBCHAPTER B. SPECIAL NEEDS

OFFENDER PROGRAMS

37 TAC §87.67

The Texas Youth Commission (the commission) proposes an amendment to §87.67, concerning Corsicana Stabilization Unit. The amendment to the section adds a reference to §93.1, concerning Basic Youth Rights.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be agency-wide awareness and protection of youth rights. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North

Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§87.67. *Corsicana Stabilization Unit.*

(a) (No change.)

(b) Applicability.

(1) The mental health status review due process procedures are found in [(GAP)] §95.71 of this title (relating to Mental Health Status Review Hearing Procedure).

(2) See [(GAP)] §95.55 of this title (relating to Level II Hearing Procedure).

(3) See [(GAP)] §95.51 of this title (relating to Level I Hearing Procedure).

(4) For emergency mental health placements, see [(GAP)] §87.71 of this title (relating to Emergency Mental Health Admission).

(5) Certain basic rights are recognized for each youth in TYC, see §93.1 of this title (relating to Basic Youth Rights).

(c) Admissions.

(1) (No change.)

(2) Admission Process.

(A) (No change.)

(B) Emergency Referrals. If an emergency exists, procedures in [(GAP)] §87.71 of this title (relating to Emergency Mental Health Admission) must be followed. Consistent with emergency criteria, staff may request of the superintendent immediate placement of the youth in the CSU. On admission, requirements in this policy are effective for all emergency admissions.

(3) (No change.)

(d) - (e) (No change.)

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

Filed with the Office of the Secretary of State on July 18, 2005.

TRD-200502916

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-6014



CHAPTER 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.1

The Texas Youth Commission (the commission) proposes an amendment to §93.1, concerning Basic Youth Rights. The amendment to the section will add a reference to a new rule, §93.12, which is proposed for adoption in this issue of the *Texas*

Register, and deals with youth visitation in greater detail. The amendment to §93.1 also deletes some information which will be duplicated in §93.12.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be protection of youth rights. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§93.1. Basic Youth Rights.

(a) - (e) (No change.)

(f) Right to Personal Possessions. Youth have the right to keep and use personal possessions so long as these possessions do not endanger the safety of staff and youth, disrupt programs and activities, encourage delinquent subcultural values, or appeal to the unique vulnerability of youth to improper influences. Youth shall not be in possession of contraband as defined by [(GAP)] §91.7 of this title (relating to Youth Personal Property). TYC may also limit a youth's personal possessions, including items:

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

(g) Right to Receive Visitors. Youth have the right to receive visitors, including but not limited to private in-person communication with parents. ~~[The conditions of the in-person communication may only be regulated to prevent disruption of scheduled activities and to maintain the safety and security of the facility. However, the conversation should under no circumstances be monitored. Youth have a corresponding right to refuse to receive visitors.]~~ See §93.12 of this title (relating to Visitation).

(h) Right of Access to Mail and Telephone. Youth have the right to correspond freely through the mail except when correspondence among youth presents a risk to facility security and order. Staff may not read incoming or outgoing mail. Staff may open incoming mail in the youth's presence to inspect it for contraband. Staff will not inspect and youth may seal outgoing mail to special correspondents only. Other outgoing mail from youth may be inspected for contraband prior to sealing. For additional information and an explanation of the term special correspondents, refer to [(GAP)] §93.15 of this title (relating to Youth Mail). Youth will be provided access to telephones to the extent possible within plant limitations, with equal opportunities for telephone use being provided to all residents within a facility. Youth will have access to a telephone in the event of an emergency. TYC does not have a responsibility to pay for incoming or outgoing long-distance

calls, except in an emergency. See [(GAP)] §93.13 of this title (relating to Use of Telephone).

(i) - (o) (No change.)

(p) Right to Express Grievances and Appeal Decisions. Youth have the right, without fear of reprisal, to have access to a prompt and fair method of resolving complaints. Youth have the right to appeal to the executive director from any decision made regarding them. See [(GAP)] §93.31 of this title (relating to Youth Complaint Resolution System).

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 July 18, 2005.

TRD-200502917

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-6014



37 TAC §93.12

The Texas Youth Commission (the commission) proposes new §93.12, concerning Visitation. The new section will set forth the agency's rules regarding visitation conditions, times, duration and complaints.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide for safe, orderly visitation which contributes to youth resocialization. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under the Human Resources Code, §61.045, which assigns to the commission responsibility for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the commission.

The proposed rule affects the Human Resources Code, §61.034.

§93.12. Visitation.

(a) Purpose. All Texas Youth Commission (TYC) youth shall be allowed to receive visitation regardless of the youth's program placement to communicate and associate with their family and non-family individuals at regular intervals.

(b) Applicability. A youth shall be allowed to receive visits from his/her attorney or clergy pursuant to §93.11 of this title (relating

to Access to Attorneys and Courts) and §93.17 of this title (relating to Access to Personal Minister, Pastor, or Religious Counselor).

(c) Non-Eligible Individuals for Visitation. The following individuals are not eligible for visitation:

(1) a former or current TYC youth, except if a former TYC youth is an immediate family member;

(2) a parent whose rights have been terminated by a court and the youth is under age 18;

(3) any individual who is restricted from contact with a TYC youth by a valid court order;

(4) any former or current TYC employee, unless the former or current TYC employee is an immediate family member of the youth;

(5) any individual, based upon reasonable cause to believe, who would pose a risk to the facility/programs safety and security, or interfere with the youth's treatment, rehabilitation, or successful reestablishment in the community; and

(6) a victim who is under the age of 18 that has not received approval from the director of clinical services.

(d) Visitation Scheduling.

(1) Visitation Days. Visitation days are at least, Saturday and Sunday to include Thanksgiving and Christmas. Additional visitation days may be provided, as designated by the chief local administrator (CLA) or designee.

(2) Visitation Hours. The facility/program must provide two 8-hour visitation days per week. The facility/program may provide extended visitation hours, as designated by the CLA or designee.

(3) Length of Visitation.

(A) General Population. Visitation must be at least two (2) hours per each visitation. The CLA or designee may authorize longer visitation periods.

(B) Security Unit.

(i) Youth whose placement is in the Institution Detention Program (IDP) or the Security Program will receive a minimum of one hour per each visitation.

(ii) Youth whose placement is in the Behavior Management Program (BMP) will receive a minimum of one hour per each visitation, with the exception of youth on stages 3-5. Youth on stages 3-5 will receive a minimum of two (2) hours per each visitation.

(iii) Youth whose placement is in the Aggression Management Program (AMP) will receive:

(I) 30 minutes per each visitation on Stage 1;

(II) one hour per each visitation on Stage 2-3;

and

(III) two (2) hours per each visitation on Stage

4-5.

(iv) For youth whose placement is in Protective Custody, the mental health professional (MHP) will determine if the youth is capable of receiving visitors. If so, the MHP will determine the length of visitation and the level of observation.

(C) Corsicana Stabilization Unit. Youth whose placement is in the Corsicana Stabilization Unit (CSU) will receive a minimum of one hour per each visitation in a secure area adjacent to the CSU. The exception to this is if the clinical staffing team has determined that a CSU youth does not require restriction to the CSU. In this

case, visitation will be the same as for general population youth at Corsicana Residential Treatment Center.

(4) Number of Visitors. There is no limit to the number of visitors per visitation. However, a youth will only be allowed two (2) face-to-face contact visitors at any one time during each visitation, unless the CLA or designee grants an increase in the number of face-to-face contact visitors for the visitation period.

(e) Conditions of Visitation.

(1) Adequate Space. Adequate space shall be provided for visitation. Outdoor visitation may be allowed if safety and weather permit.

(2) Private Parental Visitation. Parents shall have the right to private, in-person communication with their child for reasonable periods of time. The time, place, and conditions of the private, in-person communication may only be regulated to prevent disruption of scheduled activities and to maintain the safety and security of the facility/program.

(A) Private, in-person communication means a communication between a parent and his/her child in a location where conversation cannot be overheard by staff.

(B) Parents desiring to have a private, in-person communication with their child are expected to make the request at least 24 hours before the visitation. Requests not made within 24 hours should be accommodated if possible.

(3) Special Visitation. Special visitation is provided at times that may vary from the regular visitation schedule to accommodate visitors with special circumstances including, but not limited to:

(A) long-distance travel requirements;

(B) parent work schedules that preclude visiting during normal hours; or

(C) bereavement.

(4) Contact Visitation. Contact visitation allows visitors to hug the youth at the beginning and end of the visit, except at the Marlin Orientation and Assessment Unit (MOAU).

(5) Dress Code. Visitors must abide by the following dress code:

(A) no shorts (exception will be made for youth age 13 and under);

(B) no mini skirts, see-through, sleeveless clothing or tops that expose midriff, or any other clothing for youth age 13 or older which is determined by staff to be too revealing, too short, or otherwise inappropriate;

(C) tattoos must be covered (to the extent practical); and

(D) no clothing depicting drugs, sex, gang culture, obscene language or disrespect to other persons or ethnicities.

(6) Disruption During Visitation and Removal.

(A) The CLA or designee or the director of security may deny visitation if:

(i) a visitor appears to be under the influence of drugs or alcohol;

(ii) a visitor refuses to cooperate;

(iii) a visitor creates a disturbance;

(iv) a visitor is hostile to the point of disruption; or

(v) evidence exists that a visitor has passed contraband to a youth or staff member or aided a youth in an escape or attempted escape.

(B) The CLA or designee or the director of security may determine the appropriate action to be taken including asking the visitor to leave the facility/program or notifying local law enforcement. If local law enforcement is notified, any further action will be at the discretion of the local law enforcement.

(7) Denial of Future Visitation of Visitors. The CLA or designee may deny visitation if evidence exists that a visitor has:

(A) passed contraband to a youth or staff member;

(B) aided a youth in an escape or attempted escape;

(C) provided false information or failed to provide accurate information to staff with regard to visitation; or

(D) engaged in disruption of visitation similar to examples listed in paragraph (6) of this subsection. The severity of the incident is a factor in determining the length of time visitation may be denied.

(8) Denial of Visitation for TYC Youth. Youth may not receive visitors if at the time of visitation:

(A) the youth is out of control and it is unsafe to allow visitation, or

(B) the youth is assaultive or threatens to engage in assaultive conduct during visitation; or

(C) the youth engages in misconduct during visitation.

(9) Denial of Visitation for TYC Campus.

(A) If a dorm is on shut-down, youth will be allowed visitation unless youth individually meet criteria for denial of visitation.

(B) Denial of visitation for an entire campus due to unrest, the fact that the safety of the campus is uncertain, or any other extraordinary situation must be approved by the appropriate director of juvenile corrections and the assistant deputy executive director for juvenile corrections.

(10) Refusal of Visitation. Youth may refuse to receive visitors.

(11) Staff Availability During Visitation. The facility/program staff are required to be available to answer visitors' questions and address concerns during visitation hours.

(12) Publication of Rules. The facility/program staff are required to post the visitation rules in English and Spanish on a central bulletin board, and assist other non-English speaking individuals to understand posted rules, as needed. The visitation rules shall:

(A) address all pertinent issues including, but not limited to, visitation days and hours, positive identification, visitor dress code, prohibited contraband, items authorized in visitation area, and expected demeanor of visitors; and

(B) be sent with the admission letter to parents or legal guardian.

(f) Review Process.

(1) Visitation Complaints. Complaints by parents or youth with regard to visitation are filed pursuant to §93.31 of this title (relating to Complaint Resolution System).

(2) Public Complaints. Complaints by a member of the public with regard to visitation are filed pursuant to §81.11 of this title (relating to Complaints from the Public).

(g) Check-In Process.

(1) Register. All visitors must register upon entry to a facility/program. The facility/program staff must document all visitations through the computerized visitor tracking and reporting system.

(2) Identification. Adult visitors must produce valid identification for themselves and accompanying visitor(s) 13 years of age or older. Acceptable picture identification includes:

(A) valid state driver's license;

(B) state issued identification card;

(C) current military identification;

(D) school issued identification card;

(E) other official picture identification; or

(F) a TYC visitor identification badge.

(3) Items. Items brought onto agency property may be limited and regulated by TYC. Prohibited items are forbidden on campus. For a list of prohibited items, see §97.10 of this title (relating to Entry Searches). Visitors will be allowed to bring in the items listed below. All other items must be left in the visitor's vehicle unless the control center posts a list of items otherwise allowed in a visitor's possession while on facility grounds. The additional items must be approved by the CLA.

(A) Identification and car keys.

(B) Visitors with infants will be allowed to bring a bottle and a diaper on campus.

(C) If vending machines are available, visitors will be allowed to bring in a maximum of ten (10) dollars in coins for the vending machines.

(4) Search.

(A) All individuals, vehicles, and items entering the facility/program are subject to search pursuant to §97.10 of this title.

(B) Parking lots are subject to inspection by TYC's canine (K-9) team(s), and law enforcement maybe notified when necessary. For parking lot inspections, see §97.13 of this title (relating to Use of Canine (K-9) Teams).

(C) Visitors shall declare at the control center all metal items on their person and must successfully pass through the metal detector.

(D) Belongings and outer garments (coats, rain gear, etc.) will be removed and searched.

(E) Visitors' refusal to submit to a search of their person or personal property may be considered legitimate grounds for denying access to the facility/program.

(F) Visitors refusing or failing to pass successfully through a metal detector will be denied access.

(G) Visitors are directed to the visitation area and arrangements are made to transport youth to the visitation area. When possible, visitors will be escorted.

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 July 18, 2005.

TRD-200502918

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-6014



37 TAC §93.33

The Texas Youth Commission (the commission) proposes an amendment to §93.33, concerning Alleged Abuse, Neglect, and Exploitation. The amendment to the section will authorize an investigator who is conducting an investigation under this rule to make findings on misconduct other than abuse, neglect, or exploitation.

The amended section also includes several revisions relating to notification of findings and access to reports. Specifically, the section will require that when an allegation is reported by a medical health provider (MHP) employed or contracted by University of Texas Medical Branch or Texas Tech University Health Sciences Center, notice of the investigation findings and appeal rights shall be provided to the MHP. The MHP shall also, upon request, be provided a redacted copy of the investigation report. The section is also amended to clarify that investigation reports shall be provided to a law enforcement or criminal justice agency for purposes of investigation and prosecution, upon request.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the protection of youth committed to the commission's custody. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.045, which assigns to the commission responsibility for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the commission.

The proposed rule affects the Human Resources Code, §61.034. §93.33. *Alleged Abuse, Neglect and Exploitation.*

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) For procedures regarding the resolution of youth complaints, refer to [(GAP)] §93.31 of this title (relating to Complaint Resolution System).

(3) For procedures regarding appeals to the executive director, refer to [(GAP)] §93.53 of this title (relating to Appeal [Appeals] to the Executive Director).

(4) For procedures regarding reporting the death of a youth, refer to [(GAP)] §99.51 of this title (relating to Death of a Youth).

(c) Explanation of Terms Used.

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

(5) Deputy Chief Inspector General - the person employed in TYC's Office of General Counsel [office of general counsel] who is responsible for overseeing investigations of allegations of abuse, neglect or exploitation and compiling investigation information.

(6) Inspector General - the person employed in TYC's Office [office] of General Counsel and located in a TYC facility or district office who is responsible for conducting investigations.

(d) Reporting Requirements.

(1) Any person having cause to believe that a youth has been or may be adversely affected by abuse, neglect, or exploitation by an employee, volunteer or contractor in programs or facilities under TYC jurisdiction will report the matter in accordance with the provisions of this rule. The report may be made also to an appropriate law enforcement agency or to the Department of Family and Protective Services (DFPS). [Protective and Regulatory Services (DPRS).]

(2) The CLA [of residential facilities] will report the following incidents and injuries in accordance with the same provisions of this rule that are applicable to reports of persons having cause to believe that a youth has been or may be adversely affected by abuse, neglect, or exploitation by an employee, volunteer, or contractor:

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

(3) A report under subsection (d)(1) of this section will be made immediately or no later than by the end of the current work shift if the person making the report is an employee, volunteer, or contractor. A report under subsection (d)(2) of this section will be made immediately upon the CLA's first knowledge [learning] of the incident or injury prompting the report.

(4) - (5) (No change.)

(e) Reporting Contents.

(1) A report under subsection (d)(1) of this section will be made orally or in writing to the facility's CLA or any TYC staff member. A youth or parent may also make the report by filing a complaint under the complaint resolution procedures in [(GAP)] §93.31 of this title [(relating to Complaint Resolution System)]. A TYC staff member who receives a report made under subsection (d)(1) of this section will refer it immediately to the facility's CLA.

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

(f) Actions of the Chief Local Administrator Regarding Report. Upon receipt of a report under subsection (d)(1) of this section or upon the CLA's first knowledge [learning] of an incident or injury under subsection (d)(2) of this section, the CLA will immediately take the following actions:

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

(g) (No change.)

(h) Standards for Investigations.

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

(6) The investigation will be directed at resolving all the relevant issues raised by the report.

(A) With regard to a report of alleged abuse, the investigator will find whether the:

(i) (No change.)

(ii) act or failure to act caused emotional harm or physical injury to the youth; and

(iii) (No change.)

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

(7) - (8) (No change.)

(9) The investigator may make findings on misconduct other than abuse, neglect or exploitation that is established by the evidence. However, the absence of such findings should not be regarded as exoneration of the respondent or other employees as to policy violations or other misconduct indicated by the evidence. [In the event the investigator determines that the evidence affirms findings pertaining to a different type of allegation than the one assigned, the investigator will indicate those findings in the written report.]

(i) Investigation Report - Submission and Closure.

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

(3) The deputy chief inspector general will indicate whether the report of mistreatment is confirmed or not as follows:

(A) (No change.)

(B) if all the requisite findings for abuse, neglect, or exploitation are not affirmed, the deputy chief inspector general will indicate that the report is not confirmed as alleged. However, if the findings constitute a violation of agency policy or standards of care, even though they do not constitute abuse, neglect, or exploitation, the deputy chief inspector general may [with] confirm the report as a violation of agency policy or standards of care.

(4) (No change.)

(5) If the allegation was reported by a medical health provider (MHP) who is employed by or contracts with University of Texas Medical Branch (UTMB) or the Texas Tech University Health Sciences Center (TTUHSC), the MHP will be notified in writing by the deputy chief inspector general or designee of the results of the investigation and the MHP's right to appeal the findings of the investigation report pursuant to §93.53 of this title.

(j) Actions of the Chief Local Administrator Regarding Investigation Report.

(1) Within five (5) working days of receiving a closed investigation report, the CLA will review the report and [~~if satisfied with the findings, will take the following actions~~]:

(A) notify the appropriate law enforcement agency, the youth, the youth's parents or guardian, and the respondent [~~person accused of wrongdoing~~] of the results of the investigation and the right to appeal the investigation findings (see subsection (k) of this section); and

(B) (No change.)

(2) The CLA will appeal to the executive director under subsection (k)(2) of this section any investigation findings with which the administrator is not satisfied.

(k) Complaints Regarding the Conduct of Investigations and Periodic Audits.

(1) Youth and parent [Parent] complaints regarding the conduct of investigations and appeals of investigation findings will be handled in accordance with the provisions of [~~(GAP)~~] §93.53 of this title [~~(relating to Appeals to the Executive Director)~~].

(2) Any employee, volunteer, or contractor who is [The CLA and employees, volunteers, or contractors who are] found to have engaged in wrongdoing or the CLA may appeal the investigation findings to the executive director within ten (10) working days of receipt of notice of the outcome of the investigation.

(3) Appeals to the executive director [The appeal] will be made in writing and clearly describe the grounds for the appeal. The executive director will consider the recommendations of the Office of General Counsel [office of general counsel] in reaching a decision on the appeal, including any additional findings or information that may result from its further investigation into the matter.

(4) [~~(3)~~] The complaint or appeal, and the executive director's decision regarding the complaint or appeal, will be referred to the TYC Board for its review at the next regularly scheduled meeting.

(5) [(4)] The TYC Board will take whatever action it determines appropriate with regard to the complaint to ensure the investigations are conducted properly.

(6) [(5)] The TYC Board will ensure there is a periodic internal audit of procedures in the section related to alleged abuse, neglect, and exploitation investigations.

(1) Standards for Compiling Investigation Information and Confidentiality of Reports.

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

(3) The identity of the person making an allegation, and the files, reports, records, tapes, communications, and working papers used or developed in an investigation, or in providing services as a result of the investigation, are confidential and not open for public inspection under the provisions of §261.201 of the Family Code, ~~[and]~~ Chapter 552 of the Government Code, and §61.073 of the Human Resources Code.

(4) A report will be provided to a law enforcement agency or other criminal justice agency for purposes of investigation and prosecution upon request.

(5) A report will be provided to a parent, managing conservator or other legal representative of a youth upon request. The information contained in the report will be redacted [~~edited~~] to protect the identity of the person making the report, ~~[of]~~ other youth, and ~~[of]~~ any other person who may be harmed by the disclosure.

(6) A report will be provided to the MHP employed by or who contracts with UTMB or the TTUHSC who reported the allegation upon request. The information contained in the report will be redacted to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure.

(7) Evidence gathered in the course of an investigation may be provided, upon request, to an employee having a right to the information in order to appeal the investigation findings or defend against a disciplinary action arising from the investigation findings.

(A) Investigation reports are confidential youth records and the information contained therein may be used by the employee only for the appeal of investigation findings or to defend against a disciplinary action arising from an investigation.

(B) The CLA has the discretion to delete names when the CLA determines the names are not necessary for the fair resolution

of contested facts. The CLA must ensure that any information which is confidential by law is deleted prior to delivery to the respondent.

~~[(6) Evidence contained in a report may be revealed to an employee having a right to the information to appeal the investigation findings or to defend a disciplinary action based on them. Except in employment termination cases, the decision authority has the discretion to delete names when the decision authority determines the names are not necessary for the fair resolution of contested facts. Investigation reports are confidential youth records and the information contained in them may be used by the employee only for the appeal of an investigation or to defend a disciplinary action arising from an investigation.]~~

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 July 18, 2005.

TRD-200502919

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-6014



37 TAC §93.53

The Texas Youth Commission (the commission) proposes an amendment to §93.53, concerning Appeal to Executive Director. The amendment to the section will describe in greater detail the executive director's actions upon receipt of an appeal. Language will be added which establishes that the executive director's appeal decision constitutes the exhaustion of administrative remedies for purposes of appeal to the courts. The amended section also directs commission staff to assist youth complainants in interpreting appeal decisions. Finally, the section will be amended to reflect that employees of the commission or facilities operated under contract with the commission have appeal rights under the commission's personnel policies, not under this section, which addresses appeals by youth and their parents or guardians.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the section will be provision of appropriate levels of review for decisions affecting youth committed to the commission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. No private real property rights are affected by adoption of this amendment.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.045, which assigns to the commission responsibility for the

welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the commission.

The proposed amendment affects the Human Resources Code, §61.034.

§93.53. Appeal to Executive Director.

(a) Purpose. The purpose of this rule is to permit Texas Youth Commission (TYC) youth[; and their parents or guardians[; and TYC or contract program employees] to appeal decisions made by TYC or contract program employees to the TYC executive director.

(b) Appeal of Youth Complaint Resolutions to the Executive Director. Any disposition of any complaint made under §93.31 of this title (relating to Complaint Resolution System) may be appealed to the executive director, only after all levels of appeal have been exhausted locally. [An appeal to the executive director may be filed after all preliminary levels of appeal have been exhausted, concerning any TYC or contract program employee decision regarding a complaint.]

(c) Direct Appeals to the Executive Director. A direct appeal to the executive director may be filed in matters limited to:

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

(4) a disciplinary transfer or assigned disciplinary length of stay under [(GAP)] §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence);

(5) Behavior Management Program [behavior management program] length of stay [and extension] under [(GAP)] §95.17 of this title (relating to Behavior Management Program);

(6) Aggression Management Program [aggression management program] length of stay under [(GAP)] §95.21 of this title (relating to Aggression Management Program);

(7) (No change.)

(8) an appeal of a Level [level] IV hearing when a youth is being detained in a location other than a TYC operated institution;

(9) a result of the second and subsequent Level [level] IV hearing pursuant to [(GAP)] §95.59 of this title (relating to Level IV Hearing Procedure) when a youth is in an institution detention program;

(10) a decision to extend the youth's stay in the Security Program [security program], if the youth has already been in the Security Program [security program] for 240 continuous hours or longer;

(11) a decision from a mental health status review hearing pursuant to [(GAP)] §95.71 of this title (relating to Mental Health Status Review Hearing Procedure);

(12) a decision from a Title IV-E hearing; [øf]

(13) the findings [eønduet] of an alleged mistreatment investigation pursuant to [(GAP)] §93.33 of this title (relating to Alleged Abuse, Neglect, and Exploitation).

(d) Filing Deadline. All appeals to the executive director must be submitted in writing and clearly describe the grounds for the appeal and filed within six (6) months of the decision being appealed. Appeals filed after that time may be considered at the discretion of the executive director.

(e) Action of the Executive Director. [The executive director shall respond to each appeal, in writing, within 30 working days after receipt of the appeal. When the response cannot be completed within 30 working days, a delay letter explaining that the decision is delayed but will be forthcoming is sent to the complainant. Failure to respond to an appeal within this time period will constitute an exhaustion of

administrative remedy for purposes of appeal to the courts, but will not be construed as acceptance or rejection of any contention made in the appeal.]

(1) The executive director responds in writing to each appeal. Failure to respond to an appeal within 30 working days will constitute an exhaustion of administrative remedies for purposes of appeal to the courts, but will not be construed as acceptance or rejection of any contention made in the appeal.

(2) The executive director will consider the recommendations of the Office of General Counsel in reaching a decision on appeals of investigation findings, including any additional findings or information that resulted from further investigation.

(3) The executive director may uphold, reverse or modify the complaint resolution or return the complaint to the CLA with directions. The executive director's disposition of a youth complaint may also be in the form of a determination that the complaint involves operational issues that have been adequately addressed and resolved at the facility level.

(4) The executive director or his/her designee may determine that an issue has not been sufficiently developed to render an informed appeal resolution. If so, the executive director or his/her designee may, prior to the issuance of a response:

(A) conduct further investigation;

(B) provide specific direction or instruction about information needed concerning the investigation and state a time frame in which to comply with the direction or instruction; or

(C) re-open the investigation, and if the investigation finding(s) are changed, the parties entitled to notification will be notified of their right to appeal the new finding(s).

(f) Distribution of Appeals. Appeal decisions shall be distributed to the following: [Opinions are distributed to the youth, the youth's attorney or representative, if any, and certain TYC staff.]

(1) the complainant;

(2) the complainant's attorney or representative, if any;

(3) the chief local administrator (CLA) where the grievance is filed; and

(4) other persons as deemed appropriate.

(g) Appropriate TYC staff shall assist youth in interpreting appeal decisions from TYC's executive director.

(h) The appeal decision of the executive director is the final administrative resolution of an issue appealed and constitutes an exhaustion of administrative remedies for purposes of appeal to the courts.

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 July 18, 2005.

TRD-200502920

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-6014



CHAPTER 95. YOUTH DISCIPLINE

SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.21

The Texas Youth Commission (the commission) proposes an amendment to §95.21, concerning Aggression Management Program. The amendment to the section will establish lengths of visitation periods for youth assigned to the Aggression Management Program. Youth generally are allowed longer visitation periods as they progress through the stages of the program.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the provision of an incentive for youth to make progress in the treatment program designed to address aggressive behavior. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.045, which assigns to the commission responsibility for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the commission.

The proposed rule affects the Human Resources Code, §61.034.

§95.21. *Aggression Management Program.*

(a) - (e) (No change.)

(f) Admission Decision Process.

(1) The [hoea] AMP Admission Review Committee at MCSJCF is composed of at least the assistant superintendent, AMP psychologist, and the AMP program administrator. The MCSJCF [facility] psychiatrist shall review admission decisions for youth with a psychiatric history.

(2) (No change.)

(g) - (h) (No change.)

(i) Program Requirements.

(1) Within seven (7) calendar days, a comprehensive [an] assessment will be completed for each youth admitted to AMP to provide a basis for the individual case plan (ICP).

(2) - (4) (No change.)

(j) Program Components. Program structure [Structure] is designed to maximize the safety and security of youth and staff.

(1) Physical Structure.

(A) (No change.)

(B) Mechanical restraints are used for youth on Stage 1 [H] while not confined to their rooms and Stages 2 and 3 [H/H] while in the infirmary.

(C) (No change.)

(2) - (6) (No change.)

(7) Physical Exercise.

(A) (No change.)

(B) On Stages 4 and 5 [IV and V], the youth will participate in physical exercise on the general campus as safety permits.

(8) Family Notification and [;] Involvement [and Visitation]. Youths' families will be encouraged to be involved in the youths' treatment. All families receive an orientation to the AMP, and are offered the opportunity to have input into the youth treatment plan and to contact the youth by letters and visitation. Refer to §87.5 of this title (relating to Family Involvement).

(9) Youth Rights. Certain basic rights are recognized for each youth in TYC pursuant to §93.1 of this title (relating to Basic Youth Rights) [; with the exception of phone usage. Youth will be allowed phone usage pursuant to §93.11 of this title (relating to Access to Attorneys and Courts); and as provided for each AMP stage listed below].

(k) Program Progress. The AMP is comprised of five (5) stages. A review of the youth's progress for each stage is made weekly by the treatment team.

(1) Stage 1 [H]. Youth on Stage 1 [H] require the most external control. Youth spend the majority of time confined to their rooms. When out of the room, youth are in handcuffs and shackles.

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

(C) Visitation. At least 30 minutes per each visitation, if safety permits.

(D) [~~(C)~~] Weekday Services and Activities.

(i) At least two 30-minute per week individual therapy sessions provided by the PSW.

(ii) At least 30 minutes per week of individual and/or group therapy by the AMP psychologist or appropriate designee in the absence of the AMP psychologist.

(iii) At least six (6) hours daily of academic services will be provided to the youth. Up to two (2) hours of academic services may be provided in the AMP classroom.

(iv) One hour each day of large muscle exercise out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(E) [~~(D)~~] Weekend Services and Activities.

(i) One hour each day of large muscle exercise out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(ii) One hour each day of games and recreation out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(2) Stage 2 [H]. Youth on Stage 2 [H] continue to spend the majority of the day confined to their rooms but may be out of their rooms for activities without the use of mechanical restraints.

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

(C) Visitation. At least one hour per each visitation, if safety permits.

(D) [~~(C)~~] Weekday Services and Activities.

(i) At least two 30-minute per week individual therapy sessions provided by the PSW.

(ii) At least 30 minutes per week of individual and/or group therapy by the AMP psychologist or appropriate designee in the absence of the AMP psychologist.

(iii) Fifty minutes per day of Behavior Group provided by an appropriate staff.

(iv) At least six (6) hours daily of academic services will be provided to the youth. Four (4) hours of academic services will be provided in the AMP classroom.

(v) One hour each day of large muscle exercise out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(E) [~~(D)~~] Weekend Services and Activities.

(i) Fifty minutes per day of Behavior Group provided by an appropriate staff.

(ii) One hour each day of large muscle exercise out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(iii) Up to two (2) hours each day of games and recreation out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(3) Stage 3 [H]. Youth on Stage 3 [H] have additional time out of their rooms to participate in activities without the use of mechanical restraints.

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

(C) Visitation. At least one hour per each visitation, if safety permits.

(D) [~~(C)~~] Weekday Services and Activities.

(i) At least one 60-minute or two 30-minute per week individual therapy sessions provided by the PSW.

(ii) At least 30 minutes per week of individual and/or group therapy by the AMP psychologist or appropriate designee in the absence of the AMP psychologist.

(iii) Fifty minutes per day of Behavior Group provided by an appropriate staff.

(iv) At least six (6) hours daily of academic services will be provided to the youth. Four (4) hours of academic services will be provided in the AMP classroom.

(v) One hour each day of large muscle exercise out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(vi) May eat meals out of the room with up to three (3) other youth as safety permits.

(E) [~~(D)~~] Weekend Services and Activities.

(i) Fifty minutes per day of Behavior Group provided by an appropriate staff.

(ii) One hour each day of large muscle exercise out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(iii) Up to four (4) hours each day of games and recreation out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(iv) May eat meals out of the room with up to three (3) other youth as safety permits.

(4) Stage 4 [HV]. Youth on Stage 4 [HV] attend campus school and are working on issues related to transitioning to regular campus programming.

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

(C) Visitation. At least two (2) hours per each visitation, if safety permits.

(D) [(C)] Weekday Services and Activities.

(i) At least one 60-minute or two 30-minute per week individual therapy sessions provided by the PSW.

(ii) At least two 30-minute bi-weekly individual and/or group therapy sessions by the AMP psychologist or appropriate designee in the absence of the AMP psychologist.

(iii) Fifty minutes per day of Behavior Group provided by an appropriate staff in accordance with TYC Case Management Standards.

(iv) Five (5) hours per week of Core Group conducted by the PSW in accordance with TYC Case Management Standards.

(v) Four (4) hours daily of academic services will be provided to the youth in the campus school. Two (2) hours daily of academic services will be provided in the AMP classroom.

(vi) One hour each day of large muscle exercise out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(vii) One hour structured activity per day with an assigned general campus dorm as safety permits.

(viii) May eat meals out of the room with up to three (3) other youth as safety permits.

(ix) The appropriate education staff will communicate daily to the AMP staff the youth's progress and problem areas in the campus school. The AMP staff will communicate daily to the appropriate education staff the youth's progress and problem areas in AMP.

(E) [(D)] Weekend Services and Activities.

(i) Fifty minutes per day of Behavior Group provided by an appropriate staff.

(ii) One hour each day of large muscle exercise out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(iii) Up to four (4) hours each day of games and recreation out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(iv) May eat meals out of the room with up to three (3) other youth as safety permits.

(5) Stage 5 [V]. Youth on Stage 5 [V] are participating in the program of an assigned general population dorm.

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

(C) Visitation. At least two (2) hours per each visitation, if safety permits.

(D) [(C)] Weekday Services and Activities.

(i) At least one 60-minute or two 30-minute per week individual therapy sessions provided by the PSW.

(ii) At least two 30-minute bi-weekly individual and/or group therapy sessions by the AMP psychologist or appropriate designee in the absence of the AMP psychologist.

(iii) Fifty minutes per day of Behavior Group provided by an appropriate staff.

(iv) Five (5) hours per week of Core Group conducted by the PSW.

(v) Fourteen hours each day to participate in a full school day in the campus school and to participate in programming in the assigned dorm.

(vi) May eat meals out of the room with up to three (3) other youth as safety permits.

(vii) The appropriate education staff will communicate daily to the AMP staff the youth's progress and problem areas in the campus school. The AMP staff will communicate daily to the appropriate education staff the youth's progress and problem areas in AMP.

(E) [(D)] Weekend Services and Activities.

(i) Participate in weekend activities on assigned dorm as youth's behavior and safety permit.

(ii) If youth cannot participate in weekend activities on assigned dorm, the following must occur:

(I) Fifty minutes per day of Behavior Group provided by an appropriate staff.

(II) One hour each day of large muscle exercise out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(III) Up to four (4) hours each day of games and recreation out of the room or in the enclosed outdoor recreation area as the youth's behavior and weather permit.

(IV) May eat meals out of the room with up to three (3) other youth as safety permits.

(6) (No change.)

(l) Progress Reviews.

(1) Treatment Review Team.

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

(2) (No change.)

(3) Independent Review Team.

(A) The IRT reviews all youth not making satisfactory progress through the AMP. The team assesses youth who have been on Stage 1 [I] for more than 30 days, on Stages 2-5 [H to V] for more than 45 days or who have not achieved Stage 5 [V] within nine (9) months of admission to review the justification and documentation of the reasons the youth has failed to progress in the program stages and to determine if appropriate interventions are being provided the youth.

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

(4) (No change.)

(m) Program Completion and/or Release.

(1) Youth must be released from AMP when the following events occur:

(A) the completion of Stage 5 [~~V~~]; or

(B) (No change.)

(2) (No change.)

(3) If transportation is not available to the assigned facility upon the completion of Stage 5 [~~V~~], the youth will be transferred to MCSJCF's general population.

(n) Program Monitoring and Youth Rights.

(1) To ensure the program is being implemented according to the provisions of this rule, the superintendent or assistant superintendent will visit the AMP daily and the DOCS will visit the AMP weekly. In the absence of the superintendent and the assistant superintendent, the administrative duty officer [~~ADO~~] will visit the AMP, and in the absence of the DOCS, the designated psychologist will visit the AMP.

(2) The administrative assistant to the superintendent shall visit the AMP daily to ensure that the youth have [~~has~~] access to or use of the complaints resolution system. In the absence of the administrative assistant, the superintendent will designate to an informed staff the duties of ensuring that the youth have [~~has~~] access to the complaints resolution system.

(3) The youth will be offered the opportunity for a face-to-face meeting [~~interview~~] with the assistant superintendent weekly.

(o) (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 July 18, 2005.

TRD-200502921

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-6014



CHAPTER 97. SECURITY AND CONTROL SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.36

The Texas Youth Commission (the commission) proposes an amendment to §97.36, concerning Standard Security Unit Program Requirements. The amendment to the section adds a reference to §93.1, concerning Basic Youth Rights.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be agency-wide awareness and protection of youth rights. There will be no effect on small businesses. There is no anticipated economic cost

to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§97.36. *Standard Security Unit Program Requirements.*

(a) (No change.)

(b) Applicability. The provisions of this rule apply to the following rules [~~programs~~], unless otherwise stated therein:

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

(6) Certain basic rights are recognized for each youth in TYC, see §93.1 of this title (relating to Basic Youth Rights.)

(c) (No change.)

(d) Security Requirements.

(1) (No change.)

(2) Each security unit shall adhere to:

(A) (No change.)

(B) a standard set of rules of conduct for the security unit. The assistant deputy executive director for [~~of~~] juvenile corrections must approve any modification to the standard set of rules of conduct for the security unit. The security rules are as follows:

(i) (No change.)

(ii) Youth will follow the security program schedule and complete all components. This will help to ensure that youth [~~youth~~] are provided services and will help maintain the orderliness of the unit.

(iii) (No change.)

(iv) Youth will not intentionally make another person come into contact with saliva, semen, blood, urine or feces. Youth [~~Youth~~] will not attempt to or threaten to make another person come into contact with saliva, semen, blood, urine or feces.

(v) Youth will remain visible at all times and [~~youth~~] will not obstruct the view of the room. This will help to keep youth [~~youth~~] safe from harming themselves [~~yourself~~].

(vi) (No change.)

(vii) Youth will not engage in any communication with [~~your~~] peers that involves [~~involve~~] conspiring to commit a rule violation.

(viii) (No change.)

(3) - (7) (No change.)

(e) (No change.)

(f) Supervision and Contact Requirements.

(1) - (6) (No change.)

(7) A psychologist will visit any youth on the unit that has been referred for mental health services.

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 July 18, 2005.

TRD-200502922

Dwight Harris
Executive Director
Texas Youth Commission

Earliest possible date of adoption: August 28, 2005

For further information, please call: (512) 424-6014



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 as published in 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 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.33, §20.35

The Texas Ethics Commission adopts new §20.33 and §20.35, which allows the Texas Ethics Commission to terminate the campaign treasurer appointment of an inactive candidate or an inactive political committee. The rules are adopted without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2347) and will not be republished.

No comments were received regarding adoption of these rules.

The rules are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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 July 18, 2005.

TRD-200502912

David Reisman

Executive Director

Texas Ethics Commission

Effective date: August 7, 2005

Proposal publication date: April 22, 2005

For further information, please call: (512) 463-5800



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 521. FEE SCHEDULE

22 TAC §521.13

The Texas State Board of Public Accountancy adopts an amendment to §521.13, concerning Firm License Fees without changes to the proposed text as published in the May 27, 2005, issue of the *Texas Register* (30 TexReg 3074). The text of the rule will not be republished.

The amendment to §521.13 will modify the chart referred to in subsection (b) of this rule so that the fees charged for each CPA employee and non-CPA Owner will be equal to or less than the maximum amount permitted by §901.351 of the Public Accountancy Act. The fee for all offices in Texas with CPA employees and non-CPA owners of 50 or more has been decreased to \$25.00 for each such person.

The amendment will function by complying with the statutory requirement.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.351(e)(2) regarding Firm License Required.

No other article, statute or code is affected by the adoption.

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 July 14, 2005.

TRD-200502889

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: August 3, 2005

Proposal publication date: May 27, 2005

For further information, please call: (512) 305-7848



CHAPTER 527. PEER REVIEW

22 TAC §527.6

The Texas State Board of Public Accountancy adopts an amendment to §527.6, concerning Reporting to the Board without changes to the proposed text as published in the May 27, 2005, issue of the *Texas Register* (30 TexReg 3075). The text of the rule will not be republished.

The amendment to §527.6 will add the term "corrective action letter" and delete the term "conditional letter of acceptance" as acceptable reports to the Board.

The amendment will function by conforming the language of the statute to the change in terminology utilized by Peer Review Sponsors.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 July 14, 2005.

TRD-200502890

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: August 3, 2005

Proposal publication date: May 27, 2005

For further information, please call: (512) 305-7848

◆ ◆ ◆

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 17. HEARING PROCEDURES FOR ADMINISTRATIVE PENALTIES AND REMOVAL OF UNAUTHORIZED OR DANGEROUS STRUCTURES ON STATE LAND

31 TAC 17.1 - 17.3, 17.7, 17.39, 17.41, 17.46 - 17.48, 17.50

The Texas General Land Office (GLO) adopts the amendments to Title 31, Part 1, Chapter 17, relating to Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land, §17.1, relating to Purpose and Scope, §17.2, relating to Definitions, §17.3, relating to Filing of Documents, §17.7, relating to Initiation of General Land Office Action, §17.39, relating to Commissioner's Orders, §17.41, relating to Compliance or Petition for Judicial Review, §17.46, relating to Ex Parte Communications, §17.47, relating to Subpoenas, §17.48, relating to Depositions, and §17.50, relating to Remedies Not Exclusive. The amendments are adopted without changes to the proposed text as published in the June 10, 2005, issue of the *Texas Register* (30 TexReg 3397) and will not be republished.

The amendments are non-substantive updates and will ensure that the rules are current, clear, and necessary. The amendments to Chapter 17 update references to legal citations, definitions and the mailing address of the GLO Legal Division that changed since the last time this chapter was reviewed.

No comments were received regarding any of the proposed amendments to §§17.1 - 17.3, 17.7, 17.39, 17.41, 17.46 - 17.48 and 17.50.

The amendments are adopted under the Natural Resources Code, §31.051, which authorizes the commissioner to make and enforce rules consistent with the law.

Texas Natural Resources Code §51.302 and §51.3021 are not affected by the adopted amendments due to the fact that there are no substantive changes adopted.

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 July 15, 2005.

TRD-200502901

Trace Finley

Policy Director

General Land Office

Effective date: August 4, 2005

Proposal publication date: June 10, 2005

For further information, please call: (512) 475-1859

◆ ◆ ◆

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 2. MENTAL RETARDATION

AUTHORITY RESPONSIBILITIES

SUBCHAPTER L. SERVICE COORDINATION FOR INDIVIDUALS WITH MENTAL RETARDATION

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§2.553-2.556, 2.558, and 2.562; and adopts the repeal of §§2.563-2.565 in Chapter 2, Subchapter L, governing Service Coordination for Individuals with Mental Retardation, without changes to the proposed text published in the April 15, 2005, issue of the *Texas Register* (30 TexReg 2167).

The amendments are adopted to update agency names, correct mailing and website addresses, and correct referenced citations that were rendered incorrect upon transfer of the rules from Title 25, Part 2 to Title 40, Part 1 of the Texas Administrative Code. This transfer resulted from the consolidation of several state agencies, including part of the Texas Department of Mental Health and Mental Retardation (TDMHMR), to create DADS.

The amendment to §2.554(c)(1)(B) is adopted to correct an outdated reference. The amendment to §2.556(c) is adopted to replace the provision to review an individual's plan of services and supports on a quarterly basis with the provision to revise the individual's plan when the individual's needs change or when the individual, legally authorized representative or actively involved person, service provider, or other person provides relevant information indicating revision of the plan is appropriate. The quarterly review of the individual's plan of services and supports was based on a standard of review established for individuals with mental illness. For an individual with mental retardation, DADS believes it is more suitable to revise the plan when the individual's needs change or when relevant information indicates a revision is appropriate. The amendment to §2.556 also requires the plan to be revised using a person-directed planning process that is consistent with DADS' *Person Directed Planning and Family Directed Planning Guidelines for Individuals with Mental Retardation*.

The repeal of §2.563 is adopted to delete an obsolete reference. The repeal of §2.564 and §2.565 is adopted to make this subchapter consistent with the majority of DADS rules, which do not include sections about references and distribution.

DADS received no comments regarding adoption of the amendments and repeal.

40 TAC §§2.553 - 2.556, 2.558, 2.562

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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 July 11, 2005.

TRD-200502827

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Effective date: August 1, 2005

Proposal publication date: April 15, 2005

For further information, please call: (512) 438-3734



40 TAC §§2.563 - 2.565

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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 July 11, 2005.

TRD-200502828

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Effective date: August 1, 2005

Proposal publication date: April 15, 2005

For further information, please call: (512) 438-3734



PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 176. VETERANS HOMES

40 TAC §176.7

The Texas Veterans Land Board (VLB) adopts the amendments to Title 40, Part 5, Chapter 176, §176.7, relating to Admission Requirements. The amendments are adopted without changes to the proposed text as published in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1907) and will not be republished.

Previously, the definition of veteran found in §176.7(a)(2) reflected requirements found in United States Code that governs the State Home Programs. The amendments to §176.7 update the definition of veteran to reflect the definition used for all other VLB programs, as defined by Texas Natural Resources Code §161.001(a)(7).

No comments were received regarding any of the proposed amendments to §176.7.

The amendments are adopted under the Natural Resources Code, §164.004(6), which authorizes the VLB to adopt rules and procedures for among other things the operation of Veterans Homes. The amendments are adopted under Natural Resources Code §161.001(b), which authorizes the VLB to change the definition of "veteran" as necessary or appropriate to protect the best interests of the Texas State Veterans Home Program.

Texas Natural Resources Code §161.001(a)(7) 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 July 15, 2005.

TRD-200502899

Larry L. Laine

Chief Clerk, Deputy Commissioner

Texas Veterans Land Board

Effective date: August 4, 2005

Proposal publication date: April 1, 2005

For further information, please call: (512) 475-1859



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.

Proposed Rule Review

Texas Board of Pardons and Paroles

Title 37, Part 5

Under the 1997 General Appropriations Act, Article IX, Section 167, Review of Agency Rules, the Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 149 (Mandatory Supervision), Subchapter A (Rules and Conditions of Mandatory Supervision) and Subchapter B (Selection for Mandatory Supervision). The Board undertakes its review pursuant to Government Code, §2001.039, Government Code. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

The Board has conducted a preliminary review of the rules in Chapter 149 and has determined that reasons for adopting the chapter continue to exist. As part of this review process, the Board proposed amendments to certain sections of Chapter 149 (Mandatory Supervision), Subchapter A (Rules and Conditions of Mandatory Supervision) and Subchapter B (Selection for Mandatory Supervision), at a public meeting held on May 8, 2002. Those rules proposed for amendment were published in the June 7, 2002, *Texas Register* (27 TexReg 4927) and are as follows: §§149.1 (Conditions and Rules of Mandatory Supervision), 149.3 (Texas Mandatory Supervision Offenders Supervised in Other States), and 149.16 (Mandatory Release Certificate). Following a 30-day public comment period, during which there were no comments received from the public, the Board adopted the amendments at a public meeting on August 23, 2002. These amendments were subsequently published in the September 20, 2002, edition of the *Texas Register* (27 TexReg 8967). These amendments became effective on September 26, 2002.

As part of this review process, the Board proposed repeal of certain sections of Chapter 149 (Mandatory Supervision), Subchapter A (Rules and Conditions of Mandatory Supervision), at a public meeting held on May 8, 2002. Those rules proposed for repeal were published in the June 7, 2002, *Texas Register* (27 TexReg 4927), and are as follows: §149.2 (Restitution; Monthly Amount; Payment; Alterations) and §149.5 (Annual Report Status). Following a 30-day public comment period, during which there were no comments received from the public, the Board adopted the repeals at a public meeting on August 23, 2002. These repeals were subsequently published in the September 20, 2002, edition of the *Texas Register* (27 TexReg 8967). These repeals became effective on September 26, 2002.

The mandatory rules are necessary to carry out the statutory obligations of the Board relating to review for release on parole or mandatory

supervision, revocation of parole or mandatory supervision. The rules in Title 37, Part 5, Chapter 149, are reviewed and considered for readoption, revision, or repeal, in accordance with the Texas Government Code, §2001.039, and under authority of the Texas Government Code, §§508.0441, 508.036, 508.045, 508.141, 508.147, that authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to parole or mandatory supervision; to adopt rules relating to the decision-making processes used by the Board of Pardons and Paroles; to act on matters of release to parole or mandatory supervision; to consider and order release on parole; and release to mandatory supervision.

In addition, the Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 143 (Executive Clemency). The Board has conducted a preliminary review of the rules in Chapter 143 and has determined that reasons for adopting the chapter continue to exist. As part of this review process, the Board proposed amendments to a certain section of Chapter 143, §143.2 (Pardons for Innocence) at a meeting held on December 15, 2004. These proposed amendments to §143.2 were published in the December 31, 2004, *Texas Register* (29 TexReg 12110). Following a 30-day public comment period, during which there were no comments received from the public, the Board adopted the amendments at a public meeting on February 16, 2005. These amendments were subsequently published in the March 4, 2005, edition of the *Texas Register* (30 TexReg 1316). These amendments became effective on March 10, 2005. The executive clemency rules are necessary to carry out the constitutional and statutory obligations under Article IV, Section 11, Texas Constitution, which vests the Board with power to recommend that the Governor grant clemency; and under Chapter 48, Code of Criminal Procedure, and under §508.036(b), Government Code, which provides the Board with authority to adopt rules relating to the decision-making processes used by the Board of Pardons and Paroles.

Any questions or written comments pertaining to this notice of intention to review should for the next 30-day comment period be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to laura.mcelroy@tdcj.state.tx.us.

TRD-200502924

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Filed: July 18, 2005

Adopted Rule Reviews

General Land Office

Title 31, Part 1

The Texas General Land Office (GLO) files this Notice of Readoption of 31 TAC Chapter 17, relating to Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land, §§17.1 - 17.50. The readoption of Chapter 17 is filed in accordance with the GLO's Intention to Review published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1475).

As a result of this Rule Review, the GLO readopts the contents of the following sections, except as noted.

No comments were received on the proposed notice of intention to review.

The readoption of Chapter 17 is adopted under the Natural Resources Code, §31.051, which authorizes the commissioner to adopt rules consistent with law.

§17.1. Purpose and Scope.

Note: The contents of §17.1 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§17.2. Definitions.

Note: The contents of §17.2 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§17.3. Filing of Documents.

Note: The contents of §17.3 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§17.4. Computation and Extension of Time Periods.

§17.5. All Agreements Must Be in Writing.

§17.6. Conduct and Decorum.

§17.7. Initiation of General Land Office Action.

Note: The contents of §17.7 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§17.8. Request for Hearing.

§17.9. Statement of Grounds.

§17.10. Docketing and Notice.

§17.11. Notice.

§17.12. Pleadings.

§17.13. Motions before the Examiner and Responses to Motions before the Examiner.

§17.14. Prefiled Testimony and Exhibits.

§17.15. Motions To Retract.

§17.16. Dismissal without Hearing.

§17.17. Prehearing Conference.

§17.18. Motion for Consolidation.

§17.19. Motion for Postponement or Continuance.

§17.20. Time and Place of Hearings.

§17.21. Hearing Examiner.

§17.22. Parties to the Hearings.

§17.23. Order of Procedure.

§17.24. Reporters and Transcripts.

§17.25. Formal Exceptions.

§17.26. Offer of Proof.

§17.27. Interim Order.

§17.28. Witnesses To Be Sworn.

§17.29. Rules of Evidence.

§17.30. Official Notice.

§17.31. Documentary Evidence.

§17.32. Admissibility of Prepared Testimony and Exhibits.

§17.33. Introduction of Exhibits.

§17.34. Testimony Limited.

§17.35. Post-hearing Briefs.

§17.36. The Record.

§17.37. Proposal for Decision.

§17.38. Filing of Exceptions and Replies.

§17.39. Commissioner's Orders.

Note: The contents of §17.39 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§17.40. Rehearing.

§17.41. Compliance or Petition for Judicial Review.

Note: The contents of §17.41 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§17.42. Administrative Finality.

§17.43. Effective Date of Order.

§17.44. Emergency Order.

§17.45. Show Cause Orders and Complaints.

§17.46. Ex Parte Communications.

Note: The contents of §17.46 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§17.47. Subpoenas.

Note: The contents of §17.47 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§17.48. Depositions.

Note: The contents of §17.48 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§17.49. Appeals.

§17.50. Remedies Not Exclusive.

Note: The contents of §17.50 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

This concludes the GLO's review of 31 TAC Chapter 17, Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land.

TRD-200502900
Trace Finley
Policy Director
General Land Office
Filed: July 15, 2005



Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission (TREC) adopts the review of Chapter 535 (§§535.92 - 535.403) in accordance with the Texas Government Code, §2001.039. The proposed notice of review was published in the May 7, 2004, issue of the *Texas Register* (29 TexReg 4556).

In conjunction with this review, the agency adopted amendments to §§535.91, 535.92, 535.94, 535.101, 535.122, 535.123, 535.131, 535.132, 535.141, 535.143, 535.147, 535.153, 535.154, 535.171, 535.206, 535.208, 535.213 - 535.217, 535.220, 535.223, 535.224, 535.227, 535.300, 535.400, 535.402, and 535.403. The amendments change the cites to the relevant statutory provisions in Chapter 1101, Texas Occupations Code and update the rules for consistency and clarity. The agency has determined that with this change, the reasons for adopting the sections in Chapter 535 (§§535.92 - 535.403) continue to exist.

No comments were received in response to the notice of the proposed rule review as published in the above-referenced issue of the *Texas Register*.

Notice of these actions appeared in the August 27, 2004, issue of the *Texas Register* (29 TexReg 8293).

This concludes the review of Chapter 535, Rules Relating to Provisions of The Real Estate License Act.

TRD-200502878
Loretta DeHay
General Counsel
Texas Real Estate Commission
Filed: July 14, 2005



Texas Veterans Land Board

Title 40, Part 5

The Texas Veterans Land Board (VLB) files this Notice of Readoption of 40 TAC, Part 5, Chapter 176, relating to Veterans Homes, §§176.1 - 176.11. The readoption of Chapter 176 is filed in accordance with the Veteran Land Board's Intention to Review published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11990).

As a result of this Rule Review, the VLB readopts the contents of the following sections, except as noted.

No comments were received on the proposed notice of intention to review.

The readoption of Chapter 176 is proposed under the Natural Resources Code, §162.003(b), which authorizes the VLB to adopt rules concerning the operation of the program.

- §176.1. Definitions.
- §176.2. Authority.
- §176.3. Sale of Bonds.
- §176.4. Administration of the State Veterans Home Fund.
- §176.5. Appointment of Operator.
- §176.6. Operator Qualifications.
- §176.7. Admissions Requirements.
- Note: The contents of §176.7 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.
- §176.8. Qualifying Homes.
- §176.9. Fees and Expenses.
- §176.10. Rights of Board.
- §176.11. Construction Requirements.

This concludes the VLB's review of Chapter 176, Veterans Homes.

TRD-200502898
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
Texas Veterans Land Board
Filed: July 15, 2005



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.

Texas Department of Agriculture

Request for Proposals: Texas Yes! Matching Fund Program

The Marketing and Promotion Division of the Texas Department of Agriculture (the department) hereby requests proposals for Texas Yes! Matching Fund Program projects for the period of September 1, 2005 through August 31, 2007. The Texas Yes! Hometown STARS Matching Fund Program is a matching funds reimbursement program designed to directly promote tourism in rural Texas by developing promotional campaigns based on project requests submitted by successful applicants. Program and project proposal application information can be obtained at: www.texasyes.org or by contacting the Funding Coordinator at (512) 463-7731 or (866) 4TEX-YES.

Eligibility. To be eligible for participation in the matching funds program, an applicant must be a Texas Yes! community member who is a city or county, and is in good standing with the department. A Texas Yes! community member that is a city or county can submit a proposal on behalf of an event, festival or fair. The community member will be responsible for providing the sales tax information, other economic impact information, and any additional documentation or information requested by the department to indicate the impact of the project on the community or region. The department has the sole discretion to determine whether a project meets program eligibility requirements. A current Texas Yes! community member is limited to one approved project for the biennium which begins September 1, 2005 and ends August 31, 2007.

Proposal Requirements. To apply for Texas Yes! Hometown STARS matching funds a community member who is a city or county must: (i) prepare and submit a project request in accordance with this RFP; (ii) submit a sworn affidavit disclosing any existing or potential conflict of interest related to the evaluation of the project plan by the Texas Yes! Hometown STARS Review Team; and (iii) acknowledge that the applicant will notify the department of any change in the status of the project.

The deadline for submission of project requests is September 1, 2005. The department will only consider the first fifteen applications that it receives.

Each project proposal must use the Texas Yes! Hometown STARS project proposal form, located on the Texas Yes! Web site at www.texasyes.org. Each project request submitted by an eligible applicant must describe the advertising or other market-oriented promotional activities to be carried out using matching funds and must include a cover page including the name, title and address of applicant and agent; a detailed specific narrative that contains a brief description of the community or city, a brief description of the tourism event that will be promoted, dates and location of the tourism event, why the applicant wants to promote the event, how the matching funds will be used to promote the tourism event, how the Texas Yes! Hometown STARS matching funds will improve the event, how the Texas Yes! program will be promoted as part of the promotional campaign, how the applicant will work with other entities to promote the event, what impact is expected from the event and how the applicant will collect the necessary data to measure the impact of the promotion; a detailed budget/activity request; a signed

original Resolution Authorizing Application from the governing body of the applicant; a signed original Reimbursement Guidelines document and a signed original Acknowledgement of proposal completion and receipt of the Reimbursement Guidelines. Please send one original for initial review by the Funding Coordinator and then follow up with 10 additional copies, when requested by the Funding Coordinator, that will be distributed to the Review Team.

All approved projects must not begin until November 1, 2005 and must be completed by August 31, 2007, or the date specified in the project agreement, whichever is earlier. All purchasing of approved budget items and the actual events must occur within the agreement period. All approved projects will be subject to audit and periodic reporting requirements.

Proposals should be submitted to: Debbie Wall, Funding Coordinator, Texas Department of Agriculture, 1700 North Congress Avenue, 11th Floor, Austin, Texas 78701. Ms. Wall may be contacted by telephone at (512) 463-7731, by fax at 1-888-223-7045 or e-mail at debbie.wall@agr.state.tx.us for additional information about preparing the proposal.

All qualifying proposals will be evaluated by the Texas Yes! Hometown STARS Review Team, which is appointed by the Commissioner of Agriculture. The Texas Yes! Hometown STARS Review Team members are representatives from the following areas: media, print, travel industry, art, agricultural tourism, rural economic development, historical preservation, cultural diversity, entertainment industry, GO TEXAN Partner Program, and awarded Texas Yes! communities. Proposals will be selected for reimbursement funding on a competitive basis. The proposals will be rated on ten general criteria by the Texas Yes! Hometown STARS Review Team. The ten criteria are as follows: (i) the proposal displays a well planned vision for the tourism event promotion; (ii) the proposal presents concrete goals for this project; (iii) the proposal is unique and innovative; (iv) the anticipated results indicate a good return on investment; (v) the proposal includes efforts to effectively utilize regional resources; (vi) the event offers good potential to draw new and returning visitors from outside the area; (vii) the promotion will further enhance the Texas Yes! program with a high level of visibility for Texas Yes! (viii) the proposed budget is appropriate and well developed; (ix) the proposal includes a well-conceived and tangible plan for impact measurement; and (x) based on the information in the proposal, the promoted event appears to have a high probability for success with room to expand and grow. The department's Texas Yes! Hometown STARS Review Committee will base its award decisions on the Texas Yes! Hometown STARS Review Team's recommendations and each applicant's overall score. The factors that the department will consider when evaluating each application are subject to change, without notice, at the discretion of the department.

Only project requests that further or enhance the department's Texas Yes! Program and are submitted by applicants physically located in Texas will be funded. The department reserves the right to terminate any award if it determines, in its sole discretion, that a project does not further or enhance the goals of the Texas Yes! Program.

The program is subject to the availability of state funds. If such funds become unavailable during the term of the program and the department

is unable to obtain sufficient funds, the program and any agreements shall be reduced or terminated.

The announcement of the grant awards will be made by the Funding Coordinator after the first fifteen applications received by the department have been fully considered.

TRD-200502940

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: July 19, 2005

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 July 8, 2005, through July 14, 2005. 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 these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on July 20, 2005. The public comment period for these projects will close at 5:00 p.m. on August 19, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: William Hector; Location: The project is located in wetlands adjacent to the Gulf of Mexico and the Gulf Intracoastal Waterway, east of FM 457 and the Sargent Swing Bridge, at 2441 and 2442 Canal Drive, in Sargent, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Cedar Lakes West, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 244831; Northing: 3185287. Project Description: The applicant proposes to retain 0.21 acre of fill. Two lots, at 2441 and 2442 Canal Drive were filled in January of 2002 without a Department of the Army permit. The wetlands were composed of salt-tolerant vegetation including Gulf cordgrass (*Spartina spartinae*), sea-oxeye daisy (*Borrchia frutescens*), saltwort (*Batis maritima*), and saltgrass (*Distichlis spicata*). As compensation for the impact the applicant proposes to undertake the construction of two educational billboards to be placed on Matagorda County property near the intersection of FM 457 and Canal Drive just south of the Sargent Swing Bridge. CCC Project No.: 05-0358-F1; Type of Application: U.S.A.C.E. permit application #23621 is being evaluated under §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.

Applicant: Erskine Energy, LLC; Location: The project is located in wetlands adjacent to the Gulf Intracoastal Waterway between 10th Street and 12th Street, in Port Bolivar, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Bolivar, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 328146; Northing: 3251362. Project Description:

The applicant proposes to construct three ring levees to drill and produce the State Tract 334 Well No. 001. The proposed ring levees measure 160 feet by 305 feet, 100 feet by 75 feet, and 150 feet by 120 feet. Material for the levees will be excavated from within the leveed perimeter. In addition, installation of a driveway measuring 90 feet in width is proposed to provide site access. A 24-inch diameter culvert will be installed beneath the driveway. The proposal includes the fill of 0.74 acre of wet pasture and wetlands within a leveed area previously used for dredged material placement. The leveed placement area containing wetlands was not previously permitted and appears to have been constructed in the 1970s. CCC Project No.: 05-0359-F1; Type of Application: U.S.A.C.E. permit application #23761 is being evaluated under §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 Railroad Commission under §401 of the Clean Water Act.

Applicant: The Premcor Refining Group, Inc.; Location: The project is located on Taylor's Bayou, at the turning basin, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 406326; Northing: 3302375. Project Description: The applicant is requesting to perform maintenance dredging for 10 years within a 6-acre area of the Taylor's Bayou Turning Basin. The proposed depth of the hydraulic dredge would be to the previously authorized depth of -43 feet. The applicant proposes to use USACE Dredge Placement Areas 8 and 9. The applicant has signed a Texas Commission on Environmental Quality Tier I check list for the return water from the hydraulic dredging. CCC Project No.: 05-0363-F1; Type of Application: U.S.A.C.E. permit application #11636(03) 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: Harris County Public Infrastructure Department/Engineering Division; Location: The project is located along Vince Bayou, at Main Street, south of State Highway (SH) 225, in Pasadena, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Pasadena, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 285613; Northing: 3287783. Project Description: The applicant proposes to replace three existing, asphalt pavement lanes of Main Street from SH 225 to 500 feet south of Southmore Avenue with three concrete paved, curbed and gutter lanes. Drainage will be through curbed inlets connected to three reconstructed storm sewers with three respective outfalls into Vince Bayou. A headwall addition will be constructed west of Park Street at Vince Bayou, and an outfall constructed north of West Thomas Street at Vince Bayou, and a third outfall west of Ellaine Street, will be replaced. The 1,320-foot-long 0.36-acre open drainage ditch (HCFCD #1105) from Walter Street and West Thomas northwest to Vince Bayou will be replaced with box culverts. Drainage swales with inlets will be placed above the box culverts to provide storm water drainage from the surrounding properties. Compensatory mitigation will be the construction of 0.4 acre of high quality adjacent wetlands to the east bankline of Vince Bayou and the in-situ swales above the box culverts. The total amount of fill to be placed in jurisdictional waters below the ordinary high water mark is 28.96 cubic yards of fill for the proposed outfall structure at the West Thomas site. The purpose of the project is to improve vehicular safety, increase traffic flow on Main Street, and improve storm water drainage in the surrounding area to alleviate urban flooding. CCC Project No.: 05-0367-F1; Type of Application: U.S.A.C.E. permit application #23790 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Orange County Navigation and Port District; Location: The project is located within the Sabine River, at 1006 DuPont Drive, in Orange County, Texas. The project can be located on the U.S.G.S.

quadrangle map entitled: Orange, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 429431; Northing: 3328066. Project Description: The applicant proposes to construct 1,133 linear feet of bulkhead, place 140 cubic yards of riprap, and mechanically dredge 2 acres to a depth of -12 feet in the Sabine River. The dredge material will be placed within the Port of Orange Dredge Material Placement Area. The applicant also request to perform maintenance dredging for 10 years. CCC Project No.: 05-0368-F1; Type of Application: U.S.A.C.E. permit application #23801 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: Walter Oil and Gas Corporation; Location: The project is located in a Federal Fairway, offshore in the Gulf of Mexico, in East Breaks Block 254. The pipeline will enter the fairway at X=1,226,169; Y=10,058,347 and exit at X=1,223,826.24; Y=10,065,251.86. Project Description: The applicant proposes to install a 4-inch bulk oil pipeline and associated umbilical from an existing subsea well to a Panoco, Inc. platform "A". The pipeline and umbilical will be placed on the sea floor. The water depth at the project location is -1,600 feet. CCC Project No.: 05-0369-F1; Type of Application: U.S.A.C.E. permit application #23846 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Vista del Sol LNG Terminal, LP; Location: The project is located near Ingleside, San Patricio County, Texas. The terminal site can be located on the U.S.G.S. quadrangle map entitled: Gregory, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 670932; Northing: 3085466. The proposed mitigation site is located west of, and in close proximity (3 miles) to, the terminal site (Figure 1) with the mitigation site center located at Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 666699; Northing: 3084211. Project Description: Vista del Sol LNG LP (VdSLNG) applied for a Department of the Army Permit to construct and operate a Liquefied Natural Gas (LNG) marine terminal for the importation, storage, and regasification of foreign-sourced LNG. The proposed project will include a marine terminal that will receive up to 100 LNG ships per year, with berthing capabilities to moor up to two LNG ships. To accommodate LNG ships with capacities between 125,000 and 250,000 cubic meters, a slip will be constructed that initially includes one 1,289-foot-long berth. The proposed marine slip will be approximately 1,250 feet wide by 1,550 feet long and dredged to a depth of 42 feet below mean lower low water (MLLW). Public Notice 23611 was issued on January 19, 2005. Very little feedback from the public or Federal and state resource agencies on the impacts of the terminal or the pipeline. However, two resource agencies had concerns about the original wetland mitigation plan. Since that time the applicant has been developing a new wetland mitigation plan that will offset the impacts to the aquatic environment. The new mitigation plan proposes to use some of the material excavated from the marine slip to create a mitigation site in Corpus Christi Bay just offshore of Portland, San Patricio County, Texas. The applicant proposes to build a rock-lined berm, and fill in the area behind the berm to create wetlands, a shallow water area, and seagrass habitat. The remainder of the dredged material will be used to cap residue bauxite storage cells at the nearby Alcoa facility, and/or be placed in Dredged Material Placement Area 13 (PA-13). The construction of the terminal project would result in unavoidable impacts to seagrass and wetland habitat. Approximately 6.7 acres of coastal marsh (wetland), 1.1 acres of unvegetated intertidal flats and 16.7 acres of fringing seagrass will be removed during dredging activities associating with the construction of the marine terminal. VdSLNG proposes to create 20 acres of coastal marsh, 1 acre of unvegetated intertidal flats and 50 acres of seagrass habitat in shallow (<10 feet) water along the exposed north shore of Corpus Christi Bay. The mitigation site would also enhance existing seagrass beds along

the shoreline by providing a breakwater, which will calm the waters and provide an environment more conducive to seagrass colonization. CCC Project No.: 05-0373-F1; Type of Application: U.S.A.C.E. permit application #23801 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 Railroad Commission under §401 of the Clean Water Act.

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 may be obtained from Ms. Tammy Brooks, Program Specialist, 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-200502951

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council

Filed: July 20, 2005

◆ ◆ ◆

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 07/25/05 - 07/31/05 is 18% for Consumer ¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 07/25/05 - 07/31/05 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 08/01/05 - 08/31/05 is 6.25% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 08/01/05 - 08/31/05 is 6.25% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-200502930

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 19, 2005

◆ ◆ ◆

Credit Union Department

Applications for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Archer County Credit Union (Archer City) seeking approval to merge with PosTel Family Credit Union (Wichita Falls), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200502949
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 20, 2005



Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application for a name change was received from First Community Credit Union, Portland, Texas. The credit union is proposing to change its name to Horizon Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200502947
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 20, 2005



Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from North East Texas Credit Union, Lone Star, Texas to expand its field of membership. The proposal would permit persons who reside, work, worship or attend school in Upshur County, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union of Texas, Texas City, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school within a ten-mile radius of the credit union office at 18322 Clay Road, Houston, TX 77084, to be eligible for membership in the credit union.

An application was received from Star One Credit Union, Sunnyvale, California to expand the field of membership of its branch office located in Austin, Texas. The proposal would permit employees of Fired Up, Inc. who work in, are paid from or supervised from Austin, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the

date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcred.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200502948
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 20, 2005



Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

Doches Credit Union, Nacogdoches, Texas (#1) (Conditional) - See *Texas Register* issue dated March 26, 2004.

Doches Credit Union, Nacogdoches, Texas (#2) (Conditional) - See *Texas Register* issue dated March 26, 2004.

Credit Union of Texas, Dallas, Texas - See *Texas Register* issue dated April 29, 2005.

Capitol Credit Union, Austin, Texas - See *Texas Register* issue dated April 29, 2005.

Application(s) to amend Articles of Incorporation - Approved

Varco Employees Credit Union, Houston, Texas - See *Texas Register* issue dated May 27, 2005.

Concho Valley Government Employees Credit Union, San Angelo, Texas - See *Texas Register* issue dated May 27, 2005.

Application(s) for a Merger or Consolidation - Approved

KGR Credit Union (Dallas) and Neighborhood Credit Union (Dallas) - See *Texas Register* issue dated March 25, 2005.

TRD-200502950
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 20, 2005



Public Hearing Notice

The Credit Union Department will hold a public hearing for the purpose of receiving oral comments, views, and/or testimony concerning the various issues surrounding a credit union to mutual savings bank conversion. The hearing will be held on August 30, 2005 beginning at 9:00 a.m. in the Conference Room at the Department's headquarters, 914 East Anderson Lane, Austin, Texas. Hearing Officers designated by the Department will preside over the hearing. The hearing will be informal, and the rules of evidence will not apply. However, only the Hearing Officers may question a participant during a presentation. Each participant making an oral presentation at the hearing will

be limited to 10 minutes. While oral presentations are limited to 10 minutes, there is no limit on the length of a written statement, which may be turned in at the hearing. Further, the hearing may be recorded.

The Department believes that public participation will provide valuable insight into the issues and will assist the Department in deciding whether to recommend to the Credit Union Commission potential revisions to 7 TAC Section 91.1004. If the Commission determines that modifications to the Rule are appropriate, a notice of proposed rule-making will be published in the Texas Register, and an additional opportunity for public comment will be provided. Although the Department is particularly interested in obtaining the public's comments on the specific issues highlighted in this notice, it is also interested in the public's thoughts on any other legal or policy issues implicated by a credit union's decision to convert to a mutual savings bank. As a result, the Department encourages interested parties to address not only the highlighted issues, but also all other issues associated with a credit union conversion.

With respect to the specific issues surrounding a credit union to mutual savings bank conversion, the Department requests the public's view on the following:

1. Do regulatory impediments exist that will adversely affect the future growth and development of credit unions?
2. Are there any economic forces or demographic trends forcing credit unions to consider charter alternatives to survive?
3. Do the current disclosure requirements deliver information that is both understandable and useful to the member? Is there additional specific information that is needed by a member to make an informed decision on a conversion proposal?
4. Should a credit union be required to receive the approval to convert from some minimum number of members or some specific percentage of the members present and voting at the special meeting on the conversion proposal? If so, what number or percentage and why.
5. Should limitations be imposed on the types of prizes or other inducements that can be used to encourage member participation in the voting process?
6. Should members be provided some type of mechanism to share their opinions on the conversion? If so, what mechanism would provide the most benefit?
7. From a public policy perspective, are there any studies, statistics or other empirical data that would indicate mutual savings banks do not offer credit and savings products or other products and services, or otherwise fulfill their obligations to their members to the same extent as credit unions?

Attendance at the hearing is not required in order to submit a written statement; however, all written comments must be received by the close of business on August 30, 2005. Each participant's statement, whether oral or written, must include the participant's name, address, telephone number, email address, and, if applicable, the name and address of the institution or organization the participant represents.

Persons with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Request for special accommodations must be made 72 hours prior to the designated time set for the hearing by contacting Linda Clevlen by mail, telephone, or email.

TRD-200502932

Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 19, 2005

Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Lajitas Management, LLC dba Lajitas Utility Co., Inc., Docket No. 2001-0901-MLM-E on 07/01/2005 assessing \$12,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mark Nash dba Nash Landscaping, Docket No. 2002-0693-LII-E on 07/01/2005 assessing \$1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Petty, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cass County dba Moore's Landing County Park, Docket No. 2003-1210-PWS-E on 07/01/2005 assessing \$1,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Leroy Kirbie, Jr., Docket No. 2003-1574-OSI-E on 07/01/2005 assessing \$500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding East Cedar Creek Fresh Water Supply District, Docket No. 2003-1420-MWD-E on 07/01/2005 assessing \$19,760 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Buckley Oil Co, Docket No. 2004-0012-MLM-E on 07/01/2005 assessing \$23,490 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Biggins, Staff Attorney at (210) 403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Silas Frank Clark dba Clark's Backhoe Service, Docket No. 2003-0612-OSI-E on 07/01/2005 assessing \$1,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-5111, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tyler Pipe Company, A Division of McWane, Inc., Docket No. 2003-0618-MLM-E on 07/01/2005 assessing \$1,500,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Biggins, Staff Attorney at (210) 403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Travel Mart, Inc., Docket No. 2003-1458-PST-E on 07/01/2005 assessing \$6,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Petty, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Milford, Docket No. 2003-1459-MWD-E on 07/01/2005 assessing \$18,000 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 Transcontinental Gas Pipe Line Corporation, Docket No. 2004-0029-AIR-E on 07/01/2005 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pearsall, Docket No. 2003-0377-MWD-E on 07/01/2005 assessing \$5,050 in administrative penalties with \$1,010 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 City of Magnolia, Docket No. 2003-1295-MWD-E on 07/01/2005 assessing \$6,250 in administrative penalties with \$1,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Advantage Asphalt Products, Ltd, Docket No. 2003-1310-AIR-E on 07/01/2005 assessing \$750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, 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 Anwar Dayani dba Sid's Food Store, Docket No. 2003-1140-PST-E on 07/01/2005 assessing \$4,280 in administrative penalties with \$3,680 deferred.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, 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 Rainbow Materials, LP, Docket No. 2001-1170-MLM-E on 07/01/2005 assessing \$8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Staff Attorney at (512) 239-1976, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Azle, Docket No. 2003-1153-MWD-E on 07/01/2005 assessing \$12,075 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nucor Steel-Texas, A Division of Nucor Corporation, Docket No. 2002-0837-AIR-E on 07/01/2005 assessing \$327,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512) 239-4113, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Shawn Horvath dba Aero Valley Water Service, Docket No. 2002-0867-PWS-E on 07/01/2005 assessing \$19,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Goldthwaite, Docket No. 2003-1513-PWS-E on 07/11/2005 assessing \$4,385 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Lee Bell, Docket No. 2003-0481-MSW-E on 07/01/2005 assessing \$13,500 in administrative penalties with \$5,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512) 239-6224, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ranger Gas Gathering, L.L.C., Docket No. 2002-1054-AIR-E on 07/01/2005 assessing \$7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Deleon, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Javier Ulloa dba J. E. A. Used Tires, Docket No. 2003-0492-MSW-E on 07/01/2005 assessing \$13,050 in administrative penalties with \$2,610 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 CMH Parks, Inc. dba Rain-tree Acres Mobile Home Park, Docket No. 2004-0374-MWD-E on 07/01/2005 assessing \$33,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Reduction Corporation, Docket No. 2004-0421-IHW-E on 07/01/2005 assessing \$8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, 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 Leading Edge Aviation Services Amarillo, Inc., Docket No. 2004-0444-IHW-E on 07/01/2005 assessing \$29,314 in administrative penalties with \$5,863 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coastal King, Ltd., Docket No. 2004-0447-PST-E on 07/01/2005 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical Corporation, Docket No. 2004-0518-AIR-E on 07/01/2005 assessing \$9,828 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Campbell Concrete & Materials, L.P., Docket No. 2004-0558-AIR-E on 07/01/2005 assessing \$5,200 in administrative penalties with \$1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel 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 Burleson County MUD 1, Docket No. 2004-0657-PWS-E on 07/01/2005 assessing \$400 in administrative penalties with \$80 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Industrial Fab, Inc., Docket No. 2004-0733-AIR-E on 07/01/2005 assessing \$2,760 in administrative penalties with \$552 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at (903) 535-

5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hausman Road Partners, Ltd., Docket No. 2004-0768-EAQ-E on 07/01/2005 assessing \$9,375 in administrative penalties with \$1,875 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Plains Pipeline, LP, Docket No. 2004-0792-AIR-E on 07/01/2005 assessing \$16,075 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Briley and Darlene Briely dba Country Meadows Mobile Home Park, Docket No. 2004-0919-MWD-E on 07/01/2005 assessing \$5,775 in administrative penalties.

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 Rebecca Creek Municipal Utility District, Docket No. 2004-0969-PWS-E on 07/01/2005 assessing \$300 in administrative penalties with \$60 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at (512) 239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Edward Ned, Jr., Melissa Smith, Edward Smith, Sr. and Dorothy Smith dba Bayou Pines Park, Docket No. 2004-0997-MWD-E on 07/01/2005 assessing \$17,460 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Belco Manufacturing Company, Inc., Docket No. 2004-1025-AIR-E on 07/01/2005 assessing \$6,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel 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 Panama Materials, LLC dba Panama Materials Quarry, Docket No. 2004-1105-WQ-E on 07/01/2005 assessing \$21,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Lyons, 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 Village of Briarcliff, Docket No. 2004-1131-PWS-E on 07/01/2005 assessing \$298 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ali Hamoudeh Ahmad dba Trading Post Food Store, Docket No. 2004-1194-PST-E on 07/01/2005 assessing \$1,350 in administrative penalties with \$270 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2004-1203-MWD-E on 07/01/2005 assessing \$2,580 in administrative penalties with \$516 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TXU Gas Company dba Lone Star Pipeline Company Inc, Docket No. 2004-1215-AIR-E on 07/01/2005 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel 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 Encycle/Texas, Inc., Docket No. 2004-1272-IHW-E on 07/01/2005 assessing \$7,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Nederland, Docket No. 2004-1308-PWS-E on 07/01/2005 assessing \$1,270 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sayed R. Ali dba Texas Super Stop Market, Docket No. 2004-1325-PST-E on 07/01/2005 assessing \$3,270 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-5111, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Benneth Okongwu dba Mesa Drive Pharmacy, Docket No. 2004-1371-PST-E on 07/01/2005 assessing \$1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Summit Resort Developments, Inc. dba Summit Estates at Fischer TX Unit 1, Docket No. 2004-1381-

MLM-E on 07/01/2005 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bluebonnet Investors dba Bluebonnet Dairy, Docket No. 2004-1401-AGR-E on 07/01/2005 assessing \$1,010 in administrative penalties.

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 Arcelia Garcia dba Garcia's Food Store, Docket No. 2004-1420-PST-E on 07/01/2005 assessing \$9,000 in administrative penalties with \$1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hobas Pipe USA, LP dba Hobas Pipe USA, Inc., Docket No. 2004-1425-AIR-E on 07/01/2005 assessing \$11,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, 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 Unocal Pipeline Company, Docket No. 2004-1426-AIR-E on 07/01/2005 assessing \$15,000 in administrative penalties with \$3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at (903) 535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Allauddin Momin dba 6-M Grocery, Docket No. 2004-1445-PST-E on 07/01/2005 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ashley Keever, Staff Attorney at (512) 239-2987, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Erich A. Norton, Docket No. 2004-1459-LII-E on 07/01/2005 assessing \$250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Lyons, 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 C & R Distributing, Inc., Docket No. 2004-1469-MLM-E on 07/01/2005 assessing \$3,790 in administrative penalties with \$758 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at (903) 535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Products North America Inc., Docket No. 2004-1532-AIR-E on 07/01/2005 assessing \$8,372 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Lyons, 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 Huntsman Petrochemical Corporation, Docket No. 2004-1538-AIR-E on 07/01/2005 assessing \$4,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kensley Greuter, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fletcher Fields, Docket No. 2004-1549-LII-E on 07/01/2005 assessing \$250 in administrative penalties with \$50 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 Presbyterian Children's Homes and Services, Docket No. 2004-1611-MWD-E on 07/01/2005 assessing \$1,300 in administrative penalties with \$260 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTG Gas Processing, LP dba East Vealmoor Gas Plant, Docket No. 2004-1629-AIR-E on 07/01/2005 assessing \$42,550 in administrative penalties with \$8,510 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Biggins, Staff Attorney at (210) 403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pilot Industries of Texas, Inc., Docket No. 2004-1646-AIR-E on 07/01/2005 assessing \$3,330 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Lyons, 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 Valor Telecommunications of Texas, LP, Docket No. 2004-1668-PST-E on 07/01/2005 assessing \$3,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FM 78 Enterprises, Inc. dba Capital Food Mart, Docket No. 2004-1675-PST-E on 07/01/2005 assessing \$8,550 in administrative penalties with \$1,710 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tri-Con, Inc., Docket No. 2004-1699-PST-E on 07/01/2005 assessing \$6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (713) 767-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City Wide Properties Windfern, Inc. dba Quick N Easy 3, Docket No. 2004-1708-PST-E on 07/01/2005 assessing \$3,210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Courtney Hill, Staff Attorney at (512) 239-2436, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Metro Petroleum, Inc., Docket No. 2004-1749-PST-E on 07/01/2005 assessing \$8,550 in administrative penalties with \$1,710 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Three Stars Aviation, LLC dba Town & Country Airpark, Docket No. 2004-1898-PST-E on 07/01/2005 assessing \$1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wallie Jean Wilson dba Wilsons Corner, Docket No. 2004-1941-PST-E on 07/01/2005 assessing \$950 in administrative penalties.

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 Bobby Joe Williams dba Sparky's Quick Stop, Docket No. 2004-2025-PST-E on 07/01/2005 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hughes Springs, Docket No. 2005-0165-MWD-E on 07/01/2005 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tri State Electric, Ltd., Docket No. 2004-2090-AIR-E on 07/01/2005 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



Notice of District Petition

Notices mailed July 12, 2005 through July 15, 2005

TCEQ Internal Control No. 06132005-D03; Sugar Land Ranch Development L.L.C. and Hillsboro Estates L.L.C. (Petitioners) filed a petition for creation of Fort Bend County Municipal Utility District No. 159 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there are two lien holders, International Commercial Bank of China and SHK Pacific, Ltd., on the property to be included in the proposed District, and the Petitioners have provided the TCEQ with certificates evidencing their consent to the creation of the proposed District; (3) the proposed District will contain approximately 661.2 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Sugar Land, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 03-11, effective February 18, 2003, the City of Sugar Land, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. The submitted creation application also request approval of a fire protection plan for the proposal District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$20,300,000.

TCEQ Internal Control No. 05262005-D10; Perry Homes and US 59/Reading 108, Ltd. (Petitioners) filed a petition for creation of Fort Bend County Municipal Utility District No. 159 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, OmniBank, N.A., on the property. to be included in the proposed District, and the Petitioners have provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 148.47 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Rosenberg, Texas, and no portion of land within the proposed

District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-10, effective May 17, 2005, the City of Rosenberg, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$7,020,000.

TCEQ Internal Control No. 05202005-D01; LGI Homes - Sunrise Meadow, Ltd. (Petitioner) filed a petition for creation of Fort Bend County Municipal Utility District No. 162 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, KeyBank National Association, on the property. to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 305.426 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Rosenberg, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-07, effective May 4, 2005, the City of Rosenberg, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises, and park sand recreation facilities consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$16,070,000.

TCEQ Internal Control No. 05092005-D03; Shahan Prairie, L.P., (Petitioner) filed a petition for creation of Oak Point Water Control and Improvement District No.3 of Denton County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value

of the land to be included in the proposed District; (2) there are two lien holders, United Development Funding L.P. and Frederick Olden, on the property to be included in the proposed District and by affidavit they have all consented to the petition; (3) the proposed District will contain approximately 102.324 acres located within Denton County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction and the corporate limits of the City of Oak Point, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2004-09-10R, effective September 20, 2004, the City of Oak Point, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) construct, maintain, and operate a waterworks systems for residential, industrial and commercial purposes; (2) construct, maintain, and operate a sanitary sewer collection system and wastewater treatment plant; (3) control, abate and amend the harmful excesses of water, and the reclamation and drainage of overflowed lands within or affecting the District; and (4) construct, install, maintain, purchase and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is organized. According to the petition, the Petitioner have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$5,470,000.

TCEQ Internal Control No. 06162005-D05; Sugar Land Ranch Development L.L.C. and Hillsboro Estates L.L.C. (Petitioners) filed a petition for creation of Fort Bend County Municipal Utility District No. 127 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there are two lien holders, International Commercial Bank of China and Ayala Capital Corp., on the property to be included in the proposed District, and the Petitioners have provided the TCEQ with certificates evidencing their consent to the creation of the proposed District; (3) the proposed District will contain approximately 518.29 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Sugar Land, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 03-12, effective February 18, 2003, the City of Sugar Land, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. The submitted creation application also request approval of a fire protection plan for the proposal District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$26,900,000.

TCEQ Internal Control No. 06132005-D06; Hillsboro Estates, L.L.C. (Petitioner) filed a petition for creation of Fort Bend County Municipal

Utility District No.128 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are two lien holders, The International Commercial Bank of China and Ayala Capital Corp., on the property to be included in the proposed District, and the Petitioner have provided the TCEQ with certificates evidencing their consent to the creation of the proposed District; (3) the proposed District will contain approximately 670.72 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Sugar Land, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 03-13, effective February 18, 2003, the City of Sugar Land, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. The submitted creation application also request approval of a fire protection plan for the proposal District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$44,300,000.

TCEQ Internal Control No. 05202005-D02; Elmer McLester, Trustee (Petitioner) filed a petition for creation of Parkside at Mayfield Ranch Municipal Utility District of Williamson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders, on the property to be included in the proposed District; (3) the proposed District will contain approximately 370.31 acres located within Williamson County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Round Rock, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. R-05-04-14-14D2, effective April 14, 2005, the City of Round Rock, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control local storm waters; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary

investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$30,000,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

Notice of District Hearing

Notice mailed July 13, 2005

TCEQ Docket No. 2005-0320-DIS; The Texas Commission on Environmental Quality (TCEQ) will conduct a hearing on an application for dissolution (Application) of Harris County Municipal Utility District No. 9 (District). The Application was filed with the TCEQ and includes a petition by Houston Gosling Woodlands, LP (Applicant), being an owner of property located within the District. The TCEQ will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at 9:30 a.m., Wednesday, September 28, 2005, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. On December 13, 1972, the Texas Water Commission created the District. The District operates under Texas Water Code Chapters 49 and 54 as a municipal utility district. The petition filed with the Application states that dissolution is desirable so that the property consisting of the District can be annexed into and serviced by an adjacent active district, Northampton Municipal Utility District. The petition filed with the Application states that the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the Application, (2) is financially dormant, and (3) has no outstanding bonded indebtedness. An affidavit from the State Comptroller of Public Accounts has been included in the Application, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74 of the Texas Property Code. The TCEQ may grant a contested case hearing on this Application if a written hearing request is filed within 30 days after the newspaper

publication of this notice. The TCEQ may approve the Application unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Applicant and the TCEQ Docket Number; (3) the statement "I/we request a contested case hearing"; and (4) a brief description of how you would be affected by the request in a way uncommon to the general public. You may also submit your proposed adjustments to the Application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the TCEQ Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, contact the TCEQ Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the TCEQ Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800-RELAY-TX (TDD), at least one week prior to the hearing.

TRD-200502957

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 20, 2005



Notice of Water Quality Applications

The following notices were issued during the period of July 14, 2005 through July 19, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, 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 THIS NOTICE.

CANUTILLO INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 11561-003, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day via non-public access subsurface drainfields with a minimum area of 11,700 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located between Hemley Road and Chicken Farm Road, and Doniphan Drive and Kiely Road, approximately 0.5 mile southeast of the City of Vinton and 2.0 miles north of the City of Canutillo in El Paso County, Texas.

CITY OF JOURDANTON has applied for a renewal of TPDES Permit No. WQ0010418001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 330,000 gallons per day. The facility is located approximately 0.5 mile southwest of the intersection of State Highways 16 and 97 and approximately 1 mile west of the intersection of State Highway 16 and Farm-to-Market Road 1332 in Atascosa County, Texas.

CITY OF LOS FRESNOS has applied for a renewal of TPDES Permit No. 10590-002, which authorizes the discharge of treated domestic

wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located at 802 South Nogal Street, approximately 2,000 feet west of Farm-to-Market Road 1847 and 3,000 feet south of State Highway 100 at the end of Nogal Street in the southwest portion of the City of Los Fresnos in Cameron County, Texas.

OXY VINYLs, LP which operates a chemical plant manufacturing vinyl chloride monomer, has applied for a major amendment to authorize an increase total copper effluent limitations at Outfall 002; a reduction in monitoring frequencies for biochemical oxygen demand (5-day), total suspended solids, total organic carbon, and total copper at Outfall 001; and authorize the addition of air conditioning condensate and wash down water as authorized waste streams at Outfalls 002 and 003. The current permit authorizes the discharge of treated wastewater consisting of process, domestic, and utility wastewaters and storm water at a daily average flow not to exceed 1,570,000 gallons per day via Outfall 001; storm water, steam condensate, and miscellaneous wastewaters (and occasional discharges of wastewater diverted from Outfall 001) on an intermittent and flow variable basis via Outfall 002; and storm water, steam condensate, and miscellaneous wastewaters on an intermittent and flow variable basis via Outfall 003. The facility is located at 2400 Miller Cut Off Road, approximately 3,000 feet east of the intersection of Miller Cut Off Road and State Highway 134 (Battleground Road), in the City of La Porte, Harris County, Texas.

U. S. FISH AND WILDLIFE SERVICE - SANTA ANA WILDLIFE REFUGE has applied for a renewal of Permit No. 14178-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,500 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1,600 feet east of Farm-to-Market Road 907 (Alamo Road) and approximately 400 feet south of U.S. Highway 281 in Hidalgo County, Texas. The facility and disposal site are located in the drainage basin of Rio Grande Below Falcon Reservoir in Segment No. 2302 of the Rio Grande River Basin.

CITY OF VEGA has applied for a renewal of Permit No. 10308-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day via surface irrigation of 127 acres of non-public access farmland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 2.25 miles northeast of the intersection of Interstate Highway 40 and U.S. Highway 385 in Oldham County, Texas.

CITY OF WHITE DEER has applied for a renewal of Permit No. 10672-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1.5 miles southeast of the intersection of U.S. Highway 60 and Farm-to-Market Road 294 in the City of White Deer in Carson County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, **WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE.**

NORTH MISSION GLEN MUNICIPAL UTILITY DISTRICT has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize a change in the method of disinfection in the final phase from ultraviolet (UV) irradiation to chlorination. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,180,000 gallons per day. The facility is located approximately 1/2 mile west of Gaines Road and approximately 3/4 mile south of the intersection

of Addicks-Clodine Road and Beechnut Street in Fort Bend County, Texas.

TRD-200502946
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 20, 2005



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 19, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Evert Dyksterhuis dba E&M Dairy; SOAH Docket No. 582-04-1035; TCEQ Docket No. 2001-0601-AGR-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Evert Dyksterhuis dba E&M Dairy on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200502960
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 20, 2005



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 14, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Gary Lynn Wallace dba Wallace Hog Farm; SOAH Docket No. 582-05-0481; TCEQ Docket No. 2002-0234-AIR-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Gary Lynn Wallace dba Wallace Hog Farm on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200502959
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 20, 2005



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 19, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Jose Garza, Sr., dba Rancho Potrero Used Auto Parts; SOAH Docket No. 582-05-4488; TCEQ Docket No. 2003-1269-WQ-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Jose Garza, Sr., dba Rancho Potrero Used Auto Parts on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200502958

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 20, 2005



Proposed Enforcement 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, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. 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 **August 29, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO 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) 239-1864 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 August 29, 2005**. 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 should be submitted to the commission in **writing**.

(1) COMPANY: City of Abbott; DOCKET NUMBER: 2005-0538-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11544001, Regulated Entity Number (RN) 101720753; LOCATION: Abbott, Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11544001, and the

Code, §26.121(a), by failing to comply with the permitted effluent limitations for biochemical oxygen demand (BOD), total suspended solids (TSS), dissolved oxygen (DO), pH, and flow; PENALTY: \$3,920; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Stephen Allison; DOCKET NUMBER: 2005-0226-LII-E; IDENTIFIER: RN104466933; LOCATION: Red Oak, Ellis County, Texas; TYPE OF FACILITY: landscape irrigation; RULE VIOLATED: 30 TAC §30.5(a) and §344.4(a), the Code, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; 30 TAC §344.77(a)(1), (b), and (f)(3), by failing to ensure that the irrigation system using spray or rotary heads was designed and installed not to exceed the manufacturer's maximum recommended head spacing, by failing to ensure that irrigation systems using spray and rotary heads be designed and installed according to the minimum head pressure, and by failing to ensure that direct wire splices used in an irrigation system be waterproof; and 30 TAC §344.72, by failing to ensure that an irrigation system is designed, installed, maintained, repaired, and serviced in a manner that will promote water conservation; PENALTY: \$600; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Austin; DOCKET NUMBER: 2003-0025-EAQ-E; IDENTIFIER: Edwards Aquifer (EAQ) Protection Program File Number 99061402; LOCATION: Austin, Williamson County, Texas; TYPE OF FACILITY: real property; RULE VIOLATED: 30 TAC §213.4(a), by failing to obtain approval of an EAQ protection plan; PENALTY: \$2,300; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(4) COMPANY: City of Beaumont; DOCKET NUMBER: 2004-1847-MWD-E; IDENTIFIER: TPDES Permit Number 0010501020, RN104370481; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: lift station; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0010501020, and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Boring Specialties, Inc.; DOCKET NUMBER: 2005-0712-MWD-E; IDENTIFIER: TPDES Permit Number 12484001, RN100863174; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12484001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for TSS; PENALTY: \$2,192; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Brookshire Municipal Water District; DOCKET NUMBER: 2005-0647-MWD-E; IDENTIFIER: TPDES Permit Number 10001-001, RN101920312; LOCATION: Brookshire, Waller County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10001-001, and the Code, §26.121(a), by failing to comply with the daily average ammonia-nitrogen permit limit; PENALTY: \$3,632; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Calvert; DOCKET NUMBER: 2004-0337-MWD-E; IDENTIFIER: TPDES Permit Number 10095001, RN102185972; LOCATION: Calvert, Robertson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10095001, and the Code, §26.121(a), by failing to comply with the permitted limits for chlorine, pH, flow, and five-day biochemical oxygen demand (BOD5); PENALTY: \$4,950; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2005-0704-AIR-E; IDENTIFIER: Air Account Number HW0013C, RN102320850; LOCATION: Borger, Hutchinson County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.715(c)(9), Permit Number 21918, and THSC, §382.085(b), by failing to operate the north flare in the manner designed to prevent the release of unauthorized emissions; PENALTY: \$3,240; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(9) COMPANY: City Meat Market, Inc.; DOCKET NUMBER: 2005-0352-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 48206, RN102235199; LOCATION: Wallis, Austin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$2,520; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Maria Crabtree; DOCKET NUMBER: 2005-0562-EAQ-E; IDENTIFIER: RN104518329; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: residentially zoned property; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to submit an EAQ protection plan for commission approval; PENALTY: \$800; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Dynege Midstream Services, Limited Partnership; DOCKET NUMBER: 2005-0584-AIR-E; IDENTIFIER: Air Account Number CI0022A, RN100222900; LOCATION: Mont Belvieu, Chambers County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.116(b)(1), Permit Number 5452, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: City of Eldorado; DOCKET NUMBER: 2005-0560-MSW-E; IDENTIFIER: RN102142999; LOCATION: Eldorado, Schleicher County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §§330.5(a), 330.55(b)(2), 330.111, 330.132, 330.133(a) and (b), and 330.139, the Code, §26.121(a), and Municipal Solid Waste (MSW) Permit Number 2264, by failing to prevent the unauthorized discharge of contaminated water, construct and maintain a run-on control system, and by failing to apply daily cover and compact waste; PENALTY: \$3,960; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(13) COMPANY: City of Fairfield; DOCKET NUMBER: 2005-0576-MWD-E; IDENTIFIER: TPDES Permit Numbers

10168-001 and 10168-002, RN102180270 and RN101607778; LOCATION: Fairfield, Freestone County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 10168-001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for BOD5, DO, TSS, and pH, by failing to submit discharge monitoring reports (DMRs) at the required intervals; PENALTY: \$14,160; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: City of Goldthwaite; DOCKET NUMBER: 2005-0725-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1670001, RN101409134; LOCATION: Goldthwaite, Mills County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) running average for haloacetic acids (HAA5) and total trihalomethanes (TTHM); PENALTY: \$635; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Grinding and Sizing Company, Inc.; DOCKET NUMBER: 2005-0773-AIR-E; IDENTIFIER: RN101953388; LOCATION: Lufkin, Angelina County, Texas; TYPE OF FACILITY: organic materials grinding, sizing, and bagging plant; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b), by failing to obtain a permit or satisfy the conditions of a permit by rule; PENALTY: \$5,040; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: City of Gunter; DOCKET NUMBER: 2004-1856-MWD-E; IDENTIFIER: TPDES Permit Number 0010569001, RN101917904; LOCATION: Gunter, Grayson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0010569001, and the Code, §26.121(a), by failing to maintain permitted effluent limits for DO, ammonia-nitrogen, and pH; PENALTY: \$16,350; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Joe D. Havens, Inc. dba Havens Landing Wastewater Treatment Plant; DOCKET NUMBER: 2005-0599-MWD-E; IDENTIFIER: TPDES Permit Number 0014210001, RN103015517; LOCATION: Montgomery, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0014210001, and the Code, §26.121(a), by failing to maintain permitted effluent limits for BOD and TSS and by failing to report by April 20, 2004, the TSS daily average in pounds per day; PENALTY: \$5,412; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: City of Henrietta; DOCKET NUMBER: 2005-0683-PWS-E; IDENTIFIER: PWS Number 0390001, RN101258978; LOCATION: Henrietta, Clay County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and (f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: \$665; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(19) COMPANY: Holigan Homes Texas, Limited; DOCKET NUMBER: 2005-0221-EAQ-E; IDENTIFIER: EAQ Protection Program

Numbers 11-02060703 and 11-02060704, RN102727351; LOCATION: Round Rock, Williamson County, Texas; TYPE OF FACILITY: developed and sold residential homes; RULE VIOLATED: 30 TAC §213.4(g)(3), by failing to submit proof of deed recordation; 30 TAC §213.5(b)(4)(D)(ii)(II), by failing to submit certification that the water quality pond was constructed as designed; and 30 TAC §213.5(c)(3)(D) and (f)(1)(A)(I), by failing to submit certification of new sewage collection lines and by failing to submit written notification of intent to construct; PENALTY: \$3,360; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(20) COMPANY: Jefferson County; DOCKET NUMBER: 2005-0429-PST-E; IDENTIFIER: PST Facility Identification Number 74420, RN102036860; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: county maintenance department that dispenses gasoline for service vehicles; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate and submit a properly completed UST registration and self-certification form; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to provide release detection for the UST system; PENALTY: \$2,800; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: KBR Investment Inc. dba Super Stop 22; DOCKET NUMBER: 2005-0679-PST-E; IDENTIFIER: PST Facility Identification Number 74243, RN102361938; LOCATION: Deweyville, Newton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$1,520; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: City of Karnes City; DOCKET NUMBER: 2004-0521-MWD-E; IDENTIFIER: TPDES Permit Numbers 0010352001 and 0010352002, RN101610111 and RN101610020; LOCATION: Karnes City, Karnes County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Numbers 0010352001 and 0010352001, and the Code, §26.121(a), by failing to comply with the permitted limits for TSS and BOD5; PENALTY: \$29,210; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: Kinder Morgan Production Company LP; DOCKET NUMBER: 2005-0445-AIR-E; IDENTIFIER: Air Account Number PE0021W, RN102540093; LOCATION: Iraan, Pecos County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.145(2) and THSC, §382.085(b), by failing to report, in a timely manner, all instances of deviations; PENALTY: \$2,200; ENFORCEMENT COORDINATOR: Jill Reed, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(24) COMPANY: Kinder Morgan Production Company LP; DOCKET NUMBER: 2005-0667-AIR-E; IDENTIFIER: RN102170966; LOCATION: Snyder, Scurry County, Texas; TYPE OF FACILITY: gas processing; RULE VIOLATED: 30 TAC §101.20(2) and THSC, §382.085(b), by failing to comply with the emission and operating limitations; PENALTY: \$2,780; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(25) COMPANY: Laguna Madre Water District; DOCKET NUMBER: 2004-1949-MWD-E; IDENTIFIER: TPDES Permit Number 10305-001, RN102079852; LOCATION: Port Isabel, Cameron County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10305-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for ammonia and total copper; PENALTY: \$12,375; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(26) COMPANY: Nick Witherspoon dba Nick's Conoco; DOCKET NUMBER: 2005-0285-PST-E; IDENTIFIER: PST Facility Identification Number 73014, RN101725059; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$2,280; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(27) COMPANY: Permian Tank & Manufacturing, Inc.; DOCKET NUMBER: 2005-0541-AIR-E; IDENTIFIER: RN103898771; LOCATION: Kilgore, Rusk County, Texas; TYPE OF FACILITY: tank manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit for the surface coating operation and by failing to obtain a permit by rule for the dry abrasive cleaning operation; PENALTY: \$8,000; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(28) COMPANY: Phelps Dodge Corporation; DOCKET NUMBER: 2005-0390-AIR-E; IDENTIFIER: Air Account Number EE0067L, RN100226000; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: copper rod mill and refining; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Permit Number 36726, and THSC, §382.085(b), by failing to comply with the permitted limit for carbon monoxide and by failing to maintain at least a 98% destruction efficiency; PENALTY: \$1,800; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(29) COMPANY: PNI Transportation, Inc.; DOCKET NUMBER: 2005-0723-PST-E; IDENTIFIER: RN103081055; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$9,520; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: R R J & P, Inc. dba Stop & Drive; DOCKET NUMBER: 2005-0695-PST-E; IDENTIFIER: PST Registration Number 71406, RN102466646; LOCATION: Fannett, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$2,808; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(31) COMPANY: Red River Authority of Texas; DOCKET NUMBER: 2005-0594-MWD-E; IDENTIFIER: TPDES Permit Number 11252-001, RN101702256; LOCATION: Estelline, Hall County,

Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number 11252-001, by failing to comply with the BOD5 daily average concentration permit limit; PENALTY: \$1,400; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(32) COMPANY: City of Sadler; DOCKET NUMBER: 2005-0544-MWD-E; IDENTIFIER: RN101917714; LOCATION: Sadler, Grayson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0011037001, and the Code, §26.121(a), by failing to comply with the permit effluent limitations for pH; PENALTY: \$5,920; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(33) COMPANY: City of Santa Anna; DOCKET NUMBER: 2005-0791-PWS-E; IDENTIFIER: RN101388684; LOCATION: Santa Anna, Coleman County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and (f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM and HAA5; PENALTY: \$655; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(34) COMPANY: Ron Wood dba South Lakewood Grocery; DOCKET NUMBER: 2005-0681-PST-E; IDENTIFIER: PST Facility Identification Number 16005, RN102714029; LOCATION: Queen City, Cass County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$1,280; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(35) COMPANY: Southfork Development, Limited; DOCKET NUMBER: 2005-0222-EAQ-E; IDENTIFIER: EAQ Protection Program Numbers 11-00091202 and 11-00091202A, RN102724358; LOCATION: Round Rock, Williamson County, Texas; TYPE OF FACILITY: developing and selling residential homes; RULE VIOLATED: 30 TAC §213.4(g)(3) and (k), by failing to submit proof of deed recordation and by failing to maintain the water quality pond; and 30 TAC §213.5(b)(4)(D)(ii)(II) and (c)(3)(D), by failing to submit certification that the water quality pond was constructed as designed and by failing to submit certification of new sewage collection lines; PENALTY: \$2,940; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(36) COMPANY: Texas A&M University; DOCKET NUMBER: 2005-0578-MWD-E; IDENTIFIER: TPDES Permit Number 04003000, RN102182086; LOCATION: College Station, Brazos County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 04003000, and the Code, §26.121(a), by failing to comply with permitted effluent limits for total residual chlorine, hexavalent chromium, total copper, TSS, and pH; and 30 TAC §§205.6, 303.71, and 312.9(d), and the Code, §5.702(a), by failing to pay outstanding fees; PENALTY: \$11,520; ENFORCEMENT COORDINATOR: Steven Lopez, (512)

239-1896; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(37) COMPANY: Texas Polymer Services, Inc.; DOCKET NUMBER: 2005-0523-IWD-E; IDENTIFIER: TPDES Permit Number 02835, RN103014031; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: plastics compounding; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 02835, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for BOD5, TSS, total organic carbon, oil and grease, and pH; PENALTY: \$24,300; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(38) COMPANY: Trans Health Management, Inc. dba Southwest Regional Medical Complex; DOCKET NUMBER: 2005-0665-PST-E; IDENTIFIER: PST Registration Number 34487, RN102048923; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: regional specialty hospital; RULE VIOLATED: 30 TAC § 334.7(d)(3) and §334.8(c)(5)(A)(i) and (iii) and (B)(ii), and the Code, §26.3467(a), by failing to have a current valid, delivery certificate and submit a new UST registration and self-certification form, and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: \$1,920; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(39) COMPANY: Vericenter, Inc.; DOCKET NUMBER: 2004-2047-PST-E; IDENTIFIER: PST Facility Identification Number 46284, RN104403696; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: data processing; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i) and the Code, §26.3467(a), by failing to submit a self-certification renewal and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: Zuber Group, Inc. dba Convenience King 107; DOCKET NUMBER: 2005-0508-PST-E; IDENTIFIER: PST Facility Identification Number 70297, RN102265022; LOCATION: McGregor, McLennan County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to properly conduct inventory control; and 30 TAC §334.50(a)(1) and the Code, §26.3475(c)(1), by failing to provide a method of release detection for the two USTs; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200502933

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 19, 2005

◆ ◆ ◆
Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Dallas	Renaissance Hospital Dallas Inc	L05900	Dallas	00	07/11/05
Plano	Physician Reliance Network Inc DBA Texas Oncology Plano West Cancer Center	L05896	Plano	00	07/01/05
Sugar Land	Houston Veterinary Radiology Clinic PC DBA Sugar Land Veterinary Imaging	L05903	Sugar Land	00	07/01/05
Throughout Tx	PHC Wireline Inc DBA PSI Wireline	L05911	San Angelo	00	07/13/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Austin Radiological Association	L00545	Austin	110	07/07/05
Austin	Capital Cardiovascular Consultants	L05590	Austin	09	07/11/05
Baytown	Baytown Imaging Center LP	L05772	Baytown	01	07/13/05
Brownsville	JRG Equipment DBA Springman Medical Plaza	L05831	Brownsville	03	07/07/05
College Station	BCS Heart LLP	L04890	College Station	11	07/07/05
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	88	07/11/05
Denton	Numed Diagnostic Imaging	L02129	Denton	56	07/12/05
Ennis	Ellis County Medical Associates	L05759	Ennis	03	07/15/05
Garland	Baylor Medical Center at Garland	L01565	Garland	34	07/11/05
Georgetown	Georgetown Healthcare System	L03152	Georgetown	33	07/08/05
Houston	Baker Hughes Oilfield Operations Inc DBA Baker Atlas Houston Technology Center	L04452	Houston	40	07/08/05
Irving	Dallas-FT Worth Veterinary Imaging Center DBA Animal Imaging	L04602	Irving	06	07/12/05
Lufkin	Temple Imaging Center	L05839	Lufkin	01	07/15/05
McAllen	Valley Cardiology PA	L04692	McAllen	15	07/07/05
Mesquite	Texas Oncology PA DBA Texas Cancer Center Mesquite	L05741	Mesquite	01	07/13/05
New Braunfels	New Braunfels Cardiology	L05463	New Braunfels	04	07/13/05
North Richland Hills	COR Specialty Associates of North Texas PA	L05399	North Richland Hills	06	07/11/05
Paris	Turner Industries Group LLC DBA Pipe Fabrication Division Texas Operations	L05237	Paris	05	07/06/05
Plano	Presbyterian Hospital of Plano	L04467	Plano	32	07/13/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Point Comfort	Formosa Plastics Corporation - Texas	L03893	Point Comfort	30	07/14/05
San Antonio	Southwest Genetics PA	L04490	San Antonio	11	07/11/05
San Antonio	Burge Consulting Engineers	L05907	San Antonio	01	06/23/05
San Marcos	Austin Heart PA DBA Austin Heart San Marcos	L05452	San Marcos	12	07/15/05
South Houston	GCT Inspection Inc	L02378	South Houston	86	07/07/05
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs DBA Sulphur Springs Family Health Care Associates	L05701	Sulphur Springs	04	07/05/05
Texas City	Marathon Ashland Petroleum LLC	L04431	Texas City	19	07/06/05
The Woodlands	Sigma Genosys LP	L04555	The Woodlands	13	07/12/05
The Woodlands	ST Lukes Community Medical Center the Woodlands	L05763	The Woodlands	03	07/13/05
Throughout Tx	Radiation Technology Inc	L04633	Austin	19	07/08/05
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	33	06/29/05
Throughout Tx	Conocophillips Company DBA Borger Refinery & NGL Center	L02480	Borger	40	07/14/05
Throughout Tx	Giles Engineering Associates Inc	L04919	Dallas	07	07/06/05
Throughout Tx	JRJ Paving Inc	L05307	Dallas	03	07/07/05
Throughout Tx	Freese & Nichols Inc	L04301	Fort Worth	10	07/13/05
Throughout Tx	Professional Service Industries Inc	L00931	Fort Worth	113	07/14/05
Throughout Tx	Material Inspection Technology	L05672	Houston	14	07/05/05
Throughout Tx	Capitan Corporation	L05824	Midland	01	07/05/05
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	54	07/05/05
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	94	07/12/05
Throughout Tx	Plant & Pipeline Inspection Inc	L05746	Rockport	07	06/29/05
Throughout Tx	Accurate Logging & Perforation Inc	L04221	Tyler	08	07/08/05
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	58	07/11/05
Tyler	The University of Texas Health Center at Tyler	L04117	Tyler	34	07/12/05
Waco	Hillcrest Baptist Medical Center	L00845	Waco	78	07/13/05
Webster	Clear Lake Cardiology Associates PA	L05549	Webster	04	07/06/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Dallas	Baylor University Medical Center	L01290	Dallas	73	07/08/05
El Paso	Tenet Hospitals Limited DBA Sierra Medical Center	L02365	El Paso	56	06/30/05
Houston	Health Images Texas Inc DBA Healthsouth Diagnostic Medical Center	L05005	Houston	07	07/11/05
Odessa	Texas Oncology PA DBA West Texas Cancer Center	L05140	Odessa	06	06/30/05
Orange	E I Dupont De Nemours & Co	L00005	Orange	67	07/13/05
Throughout Tx	NDS Products Inc	L00991	Pasadena	41	07/07/05

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Oak Cliff Medical Foundation DBA Dallas Southwest Medical Center	L00202	Dallas	41	07/08/05
Houston	H S Bhatia MD	L05708	Houston	02	07/08/05
Lone Star	Lone Star Steel Company	L05055	Lone Star	03	07/07/05
San Antonio	Osteoscreen Inc	L04308	San Antonio	09	07/07/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200502931
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 19, 2005

Comments must be received by 5:00 p.m., Central Daylight Saving Time, on August 11, 2005.

TRD-200502936
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 19, 2005

◆ ◆ ◆
Notice of Availability of Texas Community Mental Health Services State Plan (Federal Community Mental Health Block Grant)

The Federal Community Mental Health Block Grant statute (42 USC 300x-51) requires that the Department of State Health Services (DSHS) make the Texas Community Mental Health Services State Plan available for public comment during its development.

DSHS is currently preparing the plan for Fiscal Year (FY) 2006 to describe the intended use of the Federal Community Mental Health Block Grant funds. These funds must be utilized by DSHS to develop new initiatives and/or enhance already existing service delivery systems for adults with severe mental illness and children with serious emotional disturbance.

When the draft of the FY 2006 Texas Community Mental Health Services State Plan is available (on or about August 1, 2005), it may be obtained on the DSHS website at the following address: <http://www.dshs.state.tx.us/mhprograms/MHBG.shtm>.

CONTACT INFORMATION

The submission of comments regarding the FY 2006 Texas Community Mental Health Services State Plan, should be directed to: MHBG@dshs.state.tx.us or Michael D. Maples, LPC, LMFT, Manager, Program Services Unit, Community Mental Health and Substance Abuse Section, Department of State Health Services, Mail Code: 2018, 909 West 45th Street, Austin, Texas 78751, telephone (512) 206-4747.

◆ ◆ ◆
Texas Higher Education Coordinating Board

Request for Offers for Consulting Services

The Texas Higher Education Coordinating Board (hereinafter referred to as THECB) is soliciting offers from organizations (hereinafter referred to as Consultant) for consulting services to advise THECB on the Texas Association of Developing Colleges (hereinafter referred to as TADC) Centers for Teacher Education. The ultimate objectives of this Request for Offers (hereinafter referred to as RFO) are to 1) facilitate and coordinate a collaborative strategic planning process to involve TADC college administration in planning for collaborative distance education, upgrading of technology, curriculum development and redesign and improvement of ExCET preparation; 2) work in collaboration with the Texas Higher Education Coordinating Board and TADC college administration to identify training needs of college faculty in the centers for teacher education in the areas related to distance education, curriculum development and improvement of ExCET preparation; 3) facilitate and coordinate college administration and faculty professional development workshops to meet areas of need for delivery of distance education, curriculum development and redesign and improvement of ExCET preparation; and 4) report progress in TADC teacher education enrollment, level of participation in the distance education program, successful student placements, and other evaluative measures.

This Request for Offer is being made pursuant to authority granted under Texas Government Code, Chapter 2254, Subchapter B, §2254.026 (relating to contracts with private consultants).

1. **GENERAL BACKGROUND:** The Texas Legislature established the Centers for Teacher Education Program during the 74th legislative session. The Texas Higher Education Coordinating Board was given the assignment of managing the program and has provided trustee funds to support the programs at several historically Black Colleges. These institutions collectively form the Texas Association of Developing Colleges (TADC) and include Jarvis Christian College in Hawkins, Paul Quinn College in Dallas, Texas College in Tyler, Huston-Tillotson University in Austin, and Wiley College in Marshall. These colleges are private, general academic, minority-serving institutions and the funds appropriated are used for the purpose of supporting their centers for teacher education. The purpose of the Centers for Teacher Education at the participating institutions is to 1) recruit, train and place qualified minorities in the teaching profession; 2) integrate technology into the colleges' teacher preparation programs; and 3) provide or participate in at least one course per semester via distance education technologies.

THECB retains a small percentage of the appropriations made for the teacher education centers for the costs of on-site monitoring and distribution of funds and, uses a portion of the amounts retained to obtain the services of a consultant to facilitate and coordinate the process of curriculum development and program redesign to improve teacher preparation at the participating institutions. The consultant assists with the administrative oversight of the various teacher education activities, coordinates the quarterly meetings that are held in Dallas, and works closely with THECB staff.

2. **CONTRACT TERM:**

2.1 The contract resulting from this RFO, shall commence on the execution date and shall terminate on August 31, 2006 or upon the completion of Consultant's work described herein, whichever occurs first, unless terminated earlier pursuant to terms and conditions of the anticipated contract resulting from this RFO.

3. **SCOPE OF WORK:**

3.1 Overview

Consultant shall facilitate and coordinate a collaborative strategic planning process to involve TADC college administration in planning for collaborative distance education, upgrading of technology, curriculum development and redesign and improvement of ExCET preparation; work in collaboration with the Texas Higher Education Coordinating Board and TADC college administration to identify training needs of college faculty in the centers for teacher education in the areas related to distance education, curriculum development and improvement of ExCET preparation; facilitate and coordinate college administration and faculty professional development workshops to meet areas of need for delivery of distance education, curriculum development and redesign and improvement of ExCET preparation; and report progress in TADC teacher education enrollment, level of participation in the distance education program, successful student placements and other evaluative measures. Consultant shall be solely responsible and accountable for managing and completing all activities, tasks, milestones and deliverables in accordance with the Scope of Work and the deliverables commitment of this RFO. Assignment of THECB staff to assist Consultant in its responsibility shall in no way release the Consultant from its responsibility for completing any work or delivering any products set forth in this RFO, its Statement of Work or resulting contract.

3.2 Phase I - Proposal

Consultant shall provide to THECB a proposal of services to be performed, a proposed plan of action to be taken to achieve the goals set forth in this agreement, and evaluation of the attainment of the goals and objectives set forth by the agreement. The proposal must include specific objectives and timelines for meeting each phase of the

plan. The proposal must also include consultant's travel costs to TADC schools named in Section 1 or other sites within Texas, including travel costs of THECB staff to monitor compliance with this contract.

3.2.1 In response to this RFO, the Consultant must:

1. provide a detailed description of Consultant's suggested methodology, approach and alternatives to meeting Phase I objectives;
2. propose a detailed description of the tasks, activities, resources and time lines for performing Phase I objectives (the description should be sufficiently detailed to include in a Statement of Work for the contract);
3. provide a brief description of Consultant's qualifications to perform Phase I objectives;
4. describe Consultant's prior experience in performing Phase I type objectives, with an emphasis on prior experience with public sector contracts and describe how organizations responded to Consultant's recommendations; and
5. provide a list of references where Phase I type objectives were met, including for each reference: the name of the organization, the name, title, address and telephone number of a contact person and a brief description of the services performed.

3.3 Phase II - Progress Reports

3.3.1 Consultant shall submit to THECB a progress report providing information on 1) all records of evidence of expenditure of funds to assist the TADC school's efforts to improve student recruitment and retention; 2) evidence of professional development activities at the TADC schools to date; 3) report on the extent to which library, mathematics, science, technology laboratories and other facilities at the TADC schools have been enhanced; 4) evaluation of changes in curricula to better match TExES/ExCET competencies and outcomes at TADC schools; 5) evaluation of the effectiveness of technology integration to date at TADC schools; 6) summary of expenditures for personnel related to improved educator preparation at TADC schools; and 7) summary evidence that library holdings have been enhanced in the areas of certification at TADC schools.

3.3.2 In response to this RFO, the Consultant must:

1. provide a detailed description of Consultant's suggested methodology, approach and alternatives to meeting Phase II objectives;
2. propose a detailed description of the tasks, activities, resources and time lines for performing Phase II objectives (the description should be sufficiently detailed to include in a Statement of Work for the contract);
3. provide a brief description of Consultant's qualifications to perform the Phase II objectives;
4. describe Consultant's prior experience in performing Phase II type objectives with emphasis on prior experience with public sector contracts; and
5. provide a list of references where Phase II type objectives were met, including for each reference: the name of the organization, the name, title, address and telephone number of a contact person and a brief description of the services performed.

3.4 Phase III - Final Report

3.4.1 Consultant shall submit a final report to THECB evaluating the effectiveness of the funds for improving teaching education at the TADC schools and detailing their progress to date in achieving the following: 1) improving the TExES/ExCET pass rate for TADC first-time test-takers and retake pass rates; 2) increasing the number of students enrolled in the teacher preparation program at TADC schools; 3) increasing the graduation rate of teacher preparation candidates at TADC schools;

4) integrating existing technology into teacher preparation at TADC schools; and 5) summary evidence that courses are sent per semester via distance education technologies at TADC schools.

3.4.2 In response to this RFO, the Consultant must:

1. provide a detailed description of Consultant's suggested methodology, approach and alternatives to meeting Phase III objectives;
2. propose a detailed description of the tasks, activities, resources and time lines for performing Phase III objectives (the description should be sufficiently detailed to include in a Statement of Work for the contract);
3. provide a brief description of Consultant's qualifications to perform the Phase III objectives;
4. describe Consultant's prior experience in performing Phase III type objectives; and
5. provide a list of references where Phase III objectives were met, include for each reference: the name of the organization, the name, title, address and telephone number of a contact person and a brief description of the services performed.

3.5 Audit

Consultant understands that acceptance of state funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to audit or investigate the expenditure of state funds under this contract. Consultant further agrees to cooperate fully with the State Auditor's Office or its successor, including providing all records requested. Consultant will ensure that this clause concerning authority to audit state funds received indirectly by subcontractors through the Consultant and the requirement to cooperate is included in any subcontract it awards.

3.6 Contract Deliverables

3.6.1 Consultant shall, in a good and satisfactory manner, carry out the tasks necessary to provide analysis, advice, recommendations, performances and Deliverables as called for in this RFO and in accordance with the Scope of Work. Such performances shall be rendered at schools named in Section 1 or other sites within Texas as hereinafter named by THECB or its designee, unless THECB, or its designee, shall otherwise specify in writing.

3.6.2 Substantive Outlines. As an interim deliverable, Consultant shall produce and present to THECB, for review and approval, a substantive outline for the work and content for: Phase I, Phase II, and Phase III. The substantive content of each outline shall include at a minimum a proposed final report format and a substantive discussion of the approach and methodology for the work to be performed. THECB and Consultant shall adjust or revise the scope of each outline to more clearly define the Scope of Work.

3.6.3 Draft Reports. As an interim deliverable, Consultant shall produce and present to THECB, for review and approval, an interim draft report for: Phase I, Phase II, and Phase III. This deliverable shall include: appendices with statistical data supporting findings, conclusions and recommendations. Consultant shall also include: charts, graphs, and other visual representations of core findings, conclusions and recommendations. The Consultant shall make such corrections to substance and content as identified by THECB. The Consultant shall make such adjustments and modifications to draft report as identified by THECB.

3.6.4 Final Reports. As a final contract Deliverable, Consultant shall produce a written report for: Phase I, Phase II, and Phase III. The specific organization and substantive content of each report shall be resolved throughout the project, with emphasis during the interim deliverable stages. Each report shall include the following topics and such

other topics, which are specifically agreed upon between THECB and Consultant and the report must thoroughly resolve the particular issues unique to each deliverable:

Table of Contents

Executive Summary

Scope and Objectives

Summary of Significant observations and Conclusions

Overall Conclusions and Recommendations

Background

Detailed Scope and Objectives

Methodology

Assumptions

Detailed Findings and Observations

Analysis

Recommendations

Conclusion

Appendices

3.6.5 Status Reporting. During scheduled bi-weekly meetings, Consultant shall provide oral reports on Project progress and schedule, and a schedule of the next period's activities. Consultant shall document by written minutes of the meetings. Details of the period's activities shall include:

planned schedule versus actual schedule;

any problems encountered and status;

any failures to meet deadlines and proposed solutions; and

any deviations from the Scope of Work;

The Consultant shall disclose at the meeting the impact that any problems, failures or deviations have on the scheduled completion of tasks and work segments, the Phase, and the entire Project. Bi-weekly meetings may be by telephone conference call.

The Consultant shall submit to THECB a written report of schedule and/or content variances from the Scope of Work for each Phase, at the deliverable, task and activity levels, within five (5) working days from the time of their occurrence.

The Consultant shall submit monthly written reports to THECB that shall encompass:

the overall status of the Project, including unanticipated problems and delays and the impact on Project completion;

the prior month's accomplishments;

any outstanding problems and/or issues and proposed solutions; and

upcoming activities.

At a minimum, Consultant shall illustrate all upcoming activities using work plans specifically identifying tasks, personnel and begin and end dates.

3.6.6 Consultant and THECB shall develop a tentative schedule for periodic meetings with THECB. The meetings shall be for the purpose of providing information and additional guidance to Consultant in the performance of the Scope of Work. THECB may request interim advice from Consultant at such meetings. If appropriate, such meetings may coincide with regularly scheduled meetings to report status.

3.6.7 THECB shall have thirty (30) business days following delivery of the interim or final products, Deliverables or Services ("Acceptance Period"), to accept or reject any products, Deliverables or Services ("Deliverable") tendered by Consultant in performance under this RFO or resulting contract. Tendering to THECB a Deliverable for Acceptance constitutes a certification by the Consultant that the Deliverable fully meets all of the requirements in the RFO, Scope of Work and any resulting contract. In the event THECB elects to reject a Deliverable during the Acceptance Period, THECB shall notify Consultant in writing of such rejection. THECB shall assist Consultant in identifying the error, type of error or inadequacy of the Deliverable, to permit Consultant to understand the cause of the error or inadequacy and correct the error or inadequacy. Upon Consultant's resolution of any errors or inadequacies, identified during the Acceptance Period, the Deliverable shall be resubmitted to THECB for acceptance or rejection as stated above. Acceptance of the Deliverable(s) shall be in writing by an authorized representative of THECB ("Acceptance").

3.6.8 Time is of the essence in completing the Deliverables Phases I-III Deliverables. Completion for the Deliverables for Phases I-III is required no later than July 28, 2005. Consultant should provide proposed completion dates in the format below in order to meet the project completion date of August 31, 2006.

Phase I:

Substantive Outline: tendered to THECB on or before October 14, 2005;

Interim Draft Report: tendered to THECB on or before October 24, 2005;

Final Report: tendered to THECB on or before November 4, 2004;

Status Reports, according to the schedule;

In-person-report(s).

Phase II:

Substantive Outline: tendered to THECB on or before December 5, 2005;

Interim Draft Report: tendered to THECB on or before January 25, 2006;

Final Report: tendered to THECB on or before March 3, 2006;

Status Reports, according to the schedule;

In-person-report(s).

Phase III:

Substantive Outline: tendered to THECB on or before May 5, 2006;

Interim Draft Report: tendered to THECB on or before June 16, 2006;

Final Report: tendered to THECB on or before August 4, 2006

Status Reports, according to the schedule;

In-person-report(s).

3.6.9 As an additional Deliverable, Consultant shall make "in person" presentations of its findings, analysis, conclusions and recommendations on such dates, times, and places in Austin, Travis County, Texas as requested by THECB. Such presentations may include audiences internal or external to THECB. THECB anticipates that no more than two or three such presentations shall be required. These presentations may occur, within an 18-month time frame following the Acceptance of the final report(s).

4. OFFER PROCESS

4.1 Questions relating to the RFO. Consultant is expected to examine this Request for Offers (RFO) carefully, understand the terms and conditions for providing the pertinent services, and respond completely. Failure to respond completely may result in disqualification. Questions about this RFO shall be directed, in writing only, to the address provided below, on company letterhead or via e-mail. Verbal questions and explanations are not permitted. Electronic submissions by facsimile shall be accepted. THECB reserves the right to provide or not to provide additional clarification in response to Consultant's questions. To be eligible to receive Consultant questions and responses to this RFO, if any, the Consultant, must file a written letter of interest with THECB no later than 2:00 p.m. on Tuesday, August 30, 2005. No inquiries or questions shall be answered after 2:00 p.m. on Tuesday, August 30, 2005 to allow ample distribution time for any changes. Any questions or letters of interest regarding this RFO may be directed to:

Dr. Susan Hetzler, Program Director for Educator Preparation

Academic Affairs and Research Division

Texas Higher Education Coordinating Board

P. O. Box 12788

Austin TX 78711

4.2 Delivery of Offer. A signed original and five (5) copies of the offer must be received by THECB, no later than 5:00 p.m., Central Time, September 16, 2005. Any offer received after the specified time and date shall not be considered. Conditioned on THECB's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code §2254.028, THECB anticipates entering into the resultant contract on or about September 23, 2005. The Consultant's offers shall be delivered to:

Dr. Susan Hetzler, Program Director for Educator Preparation

Academic Affairs and Research Division

Texas Higher Education Coordinating Board

1200 East Anderson Lane

Austin TX 78752

P.O. Box 12788, Austin TX 78711

4.3 THECB Reservation of Rights. THECB has sole discretion and the absolute right to reject any and all offers, terminate this Request for Offers or amend, delay or re-issue this Request for Offers. THECB reserves the right to remedy technical errors in the RFO process, waive any informalities and irregularities relating to any or all Offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any Offer to THECB. THECB further reserves the right to accept one or more offers and contract for any grouping or individual Deliverables described in this RFO. The issuance of this Request for Offers does not constitute a commitment by THECB to award any contract. THECB intends any material provided in this Request for Offers only and solely as a means of identifying the scope of services and qualifications sought.

4.4 Expenses for Preparing Offer. THECB shall not pay any cost incurred by a prospective Consultant in the preparation of a response to this Request for Offers and such costs shall not be included in the budget of the prospective Consultant submitted pursuant to this Request for Offers. The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Offers. In the event that the prospective Consultant is engaged to provide the services contemplated by this Request for Offers, any expenses incurred

by the prospective Consultant associated with the negotiation and execution of the contract for the engagement shall remain the obligation of the Consultant.

4.5 Non-responsive Offers. Failure to respond to all required portions of this RFO may result in the Consultant's response being deemed non-responsive. If a Consultant's response is deemed non-responsive by THECB, the response shall be disqualified. Offers must be signed by an officer or principal of the Consultant, however, they may be signed by an agent if accompanied by written evidence of authority.

4.6 Duration of Offer. All provisions in Consultant's Offer, including any estimated or projected costs, shall remain valid for ninety (90) days following the deadline date for submissions or if an Offer is selected, throughout the entire term of the Contract. Offers may be withdrawn in writing prior to the date and time set for receipt of Offers.

4.7 Negotiation with Consultant. Preliminary and final negotiations with top-ranked prospective Consultants may be held at the discretion of THECB. THECB may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective Consultants submitting Offers pursuant to this request. During the negotiation process, THECB and any prospective Consultant(s) with whom THECB 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 THECB. Statements made by a prospective Consultant in the Offer packet or in other appropriate written form shall be binding unless specifically changed by the Consultant, in writing, during final negotiations. A contract award may be made by THECB without negotiations if THECB determines that such an award is in THECB's best interest.

4.8 Selection Criteria. THECB shall conduct an evaluation of all offers that conform to the requirements of this RFO. In selecting a consultant, THECB shall: (1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and (2) if other considerations are equal, give preference to a consultant whose principal place of business is in the State of Texas or who shall manage the consulting contract wholly from an office in the State of Texas. Conforming offers shall be reviewed by a Selection Committee consisting of THECB staff members.

4.9 Award/Contract Subject to Available Appropriations. This Request for Offers and any contract which may result from it are subject to appropriation of State funds and the Request for Offers and/or contract may be terminated at any time if such funds are not available.

4.10 Public Information. All offers are considered to be public information subsequent to an award of the contract. All information relating to Offers shall be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents shall 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, offers 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 that the prospective Consultant believes protects that information must be cited. THECB shall assume that an Offer submitted to THECB contains no proprietary or confidential information if the prospective Consultant has not marked or otherwise identified such information in the offer at the time of its submission to THECB.

4.11 Negotiation of Contract Terms and Conditions. At any time after the offers are opened, THECB may negotiate contract terms and

conditions with one or more of the Consultants. An award of a contract is expressly conditioned upon THECB and Consultant reaching an agreement on contract terms and conditions. THECB reserves the sole right, in its discretion, to determine if contract terms and conditions are acceptable. If the Consultant and THECB are unable to reach an agreement on the contract terms and conditions, THECB shall disqualify that Consultant, and then THECB shall negotiate contract terms and conditions with the next best Consultant.

4.12 Return of Offers After Selection Process. All offers become property of THECB upon receipt and shall not be returned.

4.13 Ethics Standards. No person shall participate or assume a responsibility in the implementation and execution of this RFO process including, but not limited to, the evaluation of offers and selections of Consultant's, when such participation constitutes a conflict of interest as defined by state law or executive order. After the RFO is published, THECB or any employee shall not furnish any technical information, or solicit offers and/or prices for its requirements or take any type of action which would or could be construed to give a direct or indirect advantage or disadvantage to any potential Consultant.

4.14 Restrictions on Communication. After the RFO has been issued, Consultant is prohibited from communicating with THECB staff regarding the RFO or offers, with the following exceptions:

Dr. Susan Hetzler, in writing;

The Committee, if interviews are conducted;

THECB reserves the right to contact any Consultant for clarification after responses are opened and/or to further negotiate with any Consultant if such is deemed desirable by THECB.

THECB shall not schedule meetings with representatives of any Consultant to discuss offers, and Consultant should not contact THECB employees to explain, clarify or discuss their Offers before an award has been made except as set out in this section. Violation of this provision may lead to disqualification from this process.

5. CONTENT OF OFFERS

5.1 All Offers 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.

5.2 A Table of Contents must be included with respective page numbers opposite each topic. The Offer must contain the following completed items in the following sequence:

Transmittal Letter: A letter addressed to Dr. Susan Hetzler, Program Director for Educator Preparation, Academic Affairs and Research Division, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711 that identifies the person or entity submitting the Offer and includes a commitment by that person or entity to provide the services required by THECB. The letter must specifically identify that this Offer is in reference to THECB Texas Association of Developing Colleges-Centers for Teacher Education RFO. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Offers." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the Offer from further consideration at THECB's discretion. The letter must state, "The Offer enclosed is binding and valid at the discretion of THECB."

Executive Summary: The Offer must include a summary of the contents of the Offer, 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 Offer.

Project Offer: The Offer must track and reference each section number in Section 3 Scope of Work. Consultant should provide a substantive description of how Consultant proposes to satisfy each item. If Consultant cannot satisfy a particular item or requirement, then Consultant must clearly identify the items or requirements it cannot satisfy. If Consultant believes it can best meet the needs of THECB by suggesting a modification to the Scope of Work, please suggest alternatives. If an alternative is proposed, please include a separate section identified as "Alternative Offer to Section X.X." THECB reserves the right to not consider alternative Offers. If a response requires Consultant to assume facts not presented in the RFO, Consultant must clearly identify such assumed facts. If a section requests specific information, please include the requested information.

Cost Offer: THECB is interested in awarding a fixed fee contract. Because THECB may enter into a contract for all or some of the deliverables, please identify each deliverable and the corresponding fee and include a proposed schedule of payments. Consultant is welcome to suggest alternative fee Offers, but if an alternative is offered, please clearly identify that the fee Offer is an alternative. The THECB reserves the right to not consider alternative Offers.

Qualifications: While THECB is interested in the experience and qualifications of Consultant's firm or company, THECB is particularly interested in the experience of the individual staff Consultant intends to apply to this engagement. Therefore, please include information relating to the firm's or company's experience and qualification and please attach detailed resumes for each staff that Consultant intends to apply to this engagement. The resumes should identify the specific experience, projects and assignments for each staff offered. Emphasis should be placed on similar projects within the public sector and/or higher education.

References: Prospective Consultants shall 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 Offers.
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 Offers.
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. THECB 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 shall accompany the Offer.
5. For each such reference, the prospective Consultant shall provide a signed release from liability in the form of a letter addressed to the reference company or individual signed by Consultant for each reference provided in response to this requirement. The release from liability shall absolve the specified reference company or entity from liability for information provided to THECB concerning the prospective Consultant's performance of its engagement with the reference.

Financial Condition: As part of any Offer 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. All offers shall include the Consultant's State of Texas vendor identification number or federal tax identification number. THECB reserves the right to request such additional financial information as it deems necessary to evaluate the prospective Consultant, and by submission of an Offer, the prospective Consultant agrees to provide same. 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.

Certifications/Affirmations/Disclosures: By signing the transmittal letter and submitting an Offer, Consultant makes and agrees to make the following certifications, affirmations and disclosures. If any explanation or qualification is required for any certification, affirmation or disclosure, you must include such explanation or qualification in your transmittal letter. A false statement or misleading statement in this section is a material breach of contract and shall void the submitted Offer or any resulting contracts. Please restate each of the following certifications, affirmations or disclosures in this section of your Offer.

1. The 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 Offer.
2. The Consultant is not currently delinquent in the payment of any franchise tax owed the State of Texas.
3. Neither the Consultant nor the firm, corporation or partnership or institution represented by the Consultant or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State, the Federal antitrust laws nor communicated directly or indirectly the Offer made to any competitor or any other person engaged in such line of business.
4. The Consultant has not received compensation for participation in the preparation of the specification for this Offer.
5. Pursuant to Texas Family Code, §231.006 (relating to delinquent child support), the Consultant certifies that the individual or business entity named in this Offer is not ineligible to receive a specified payment and acknowledge that this contract may be terminated and payment may be withheld if this certification is inaccurate.
6. An Offer must include the names and Social Security Numbers of each person with at least a 25% ownership of the business entity submitting this Offer.
7. Pursuant to §2155.004 Government Code (relating to issuance of warrants to persons indebted to the State or who owe delinquent taxes to the State) the Consultant certifies that the individual or business entity named in this Offer is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
8. Consultant acknowledges and agrees that, to the extent Consultant owes any debt or delinquent taxes to the State of Texas, in accordance with §403.055(h), Government Code, any payments Consultant is owed under this Agreement shall be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Consultant owes the State of Texas until the debt or delinquent taxes are paid in full.

9. Pursuant to Article 2.45 of the Texas Business Corporation Act, Consultant must certify that it is not delinquent in a tax owed to the State under Chapter 171 of the Texas Tax Code. Any Consultant who is delinquent may not be awarded a contract by the State.

10. With respect to all services, if any, purchased pursuant to this RFO, Consultant represents and warrants that it shall buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

11. 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.

12. 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.

13. If the Consultant is an individual who has previously been employed by THECB or any other Texas state agency at any time during the two years preceding their Offer, the Consultant must disclose the following:

the nature of the previous employment with THECB or any other state agency;

the date the employment was terminated;

the annual rate of compensation for the employment at the time of the Consultant's termination.

If a Consultant is subject to this disclosure and fails to make such a disclosure, the Offer shall be disqualified.

TRD-200502937

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Filed: July 19, 2005



Request for Qualifications: Bond and Program Counsel

The Texas Higher Education Coordinating Board is seeking proposals in response to this Request for Qualifications (RFQ) for bond and program counsel. The Board is seeking to employ Bond Counsel and Program Counsel to assist the Board in the issuance of bonds and to provide general program assistance when needed.

The Board is a state agency with board members appointed by the Governor. Bonds are issued to fund ongoing student loan programs. The enabling act, Chapter 52 and Chapter 56, Texas Education Code, as amended, provides for the administration of the programs by the Board. Historically, the programs have provided funding through the repayment of student loans and earnings in amounts sufficient to meet debt service and reserve requirements and to pay administrative costs of the student loan program without drawing on the State's General Revenue Fund. The Board uses bond proceeds to fund the loan programs. The programs provide low interest loans to eligible students seeking an undergraduate education and/or graduate or professional education through public and independent institutions of higher education in Texas.

The counsel's responsibilities for bond work will include, but will not be limited to, advice to the Board, and staff of the Board (Staff) on: the legal ramifications and constraints of the issuance of bonds; the legality of loan policy proposals and legal aspects of investments and loan policy; the legality of proposed debt structuring techniques; compliance with federal tax and securities requirements for financings associated with the Board's programs; and, real and anticipated changes in state and federal law, regulations, or public policy, and the potential and real impact on existing or anticipated bond issues, investment policy, and loan policy. With respect to new bond issues, bond counsel, in consultation with the Board's Financial Advisor and Staff, may be asked to prepare or review legal documents required by the Board, Comptroller of Public Accounts, Attorney General, or outside parties; request and obtain approval of the bond issue from the Attorney General, Governor, Bond Review Board and other required authorities; and review all financial models and render opinions on the legality and relevant tax position of the proposed issuance and lending scenario. The counsel shall also perform other legal services, if requested by the Board that do not come within the functions of bond counsel for a particular bond issue, but are needed for the implementation and administration of the programs of the Board. Such services shall include, without limitation, the following: consultation concerning planning and development of programs of the Board; providing advice concerning policies for lending funds to eligible borrowers; review of program applications; review and drafting of loan documents; assistance in implementing loan guarantee programs; and advice and services concerning legislation affecting such programs.

Responses to this RFQ should include at least the following: a thorough description of your firm's ability to represent the Board in the stated job duties; a description of your firm's past experience as counsel for other state agencies; a description of your firm's past experience as counsel to state and federal banks, credit unions, finance companies, and other financial institutions; a designation of the individuals who might be assigned to the work of the Board; examples of similar programs in which your firm has assisted as legal counsel; a quotation of your proposed fee structure based upon the issuance of financing enhanced by the general obligation of the State of both fixed and variable rate bond issuance; a statement addressing the effort made by your firm to encourage and develop the participation of women and minorities in your firm; affirmation that the firm does not, and shall not during the term of the contract, represent any plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies; and a statement of willingness to comply with policies, directives, and guidelines of the Board and the Attorney General of the State of Texas.

Responses to this RFQ will be evaluated and ranked according to the information provided, and summarized for the Commissioner of Higher Education's review. Staff will rank the proposals and make a recommendation to the Commissioner. The Commissioner intends to select the proposal that demonstrates the highest degree of competency and the necessary qualifications and experience in providing the requested legal services at a fair and reasonable price.

A duly authorized representative of the firm must execute the submitted response. An unsigned response will not be accepted. Issuance of this RFQ in no way constitutes a commitment by the Board to award a contract, to issue bonds, or to pay for any services incurred either in the preparation of a response to this RFQ or for the production of any contract for services. The Board also reserves the right to make amendments to the qualifications requested by giving written notice to all firms who receive this RFQ. All communications with the Board concerning this RFQ and the selection of Bond Counsel shall be directed to Jan Greenberg, General Counsel for the Board. Any contact by a submitting firm, its employees or representatives with any Board

member for the purposes of soliciting or encouraging a favorable review may be considered grounds for disqualification.

All proposals must be received no later than 5:00 p.m., August 15, 2005. Proposal responses, modifications or addenda to an original response received by the Board after the specified time and date for closing will not be considered. Each firm is responsible for ensuring that its response reaches the Board before the proposed due date. Firms should submit one unbound original and three (3) copies of their proposal to: Texas Higher Education Coordinating Board, Jan Greenberg, General Counsel, P.O. Box 12788, Austin, Texas 78711; or hand delivered to 1200 East Anderson Lane, Room 2.170, Austin, Texas. Please mark the envelopes containing proposals with the following note in the lower left-hand corner: IN RESPONSE TO PROPOSAL REQUEST: BOND and PROGRAM COUNSEL. All proposals become the property of the Board. Proposals must set forth full, accurate and complete information as required by this request. Oral responses, instructions or offers will not be considered. The Board reserves the right to reject any and all responses.

The contract term shall be for the period beginning September 1, 2005, through August 31, 2006, with the option of a one year extension.

The contract issued under this RFQ will be in the form prescribed by the Office of the Attorney General for Outside Counsel Contracts.

Any response may be modified or withdrawn even after received by the Board at any time prior to the proposal due date. No material changes will be allowed after the expiration of the proposal due date; however, non-substantive corrections or deletions may be made with the approval of Staff. The Board reserves the exclusive right to review proposals and make an appropriate selection from such proposals. The Board is not bound to accept any proposal by virtue of this RFQ.

All costs directly or indirectly related to preparation of a response to the RFQ or any oral presentation required to supplement and/or clarify the RFQ which may be required by the Board shall be the sole responsibility of, and shall be borne by, your firm.

All proposals shall be deemed, once submitted, to be the property of the Board and are subject to Texas Public Information Act (the Act). Under the Act, information submitted in response to this RFQ may not be released by the Board during the proposal evaluation process or prior to the awarding of a contract. After the Board completes the process and a contract is awarded, proposals and information included therein may be subject to public disclosure under the Act.

TRD-200502915
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: July 18, 2005

Texas Department of Insurance

Company Licensing

Application for ARCADIAN HEALTH PLAN, INC., to use the assumed name TEXAS COMMUNITY CARE, a foreign Health Maintenance Organization. The home office is in Oakland, California.

Application for admission to the State of Texas by HSBC INSURANCE COMPANY OF DELAWARE, a foreign Fire and/or Casualty company. The home office is in Newcastle, Delaware.

Application for admission to the State of Texas by NEWMARKET UNDERWRITERS INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Concord, New Hampshire.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200502952
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 20, 2005

Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance Code as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C - H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be a risk-assuming carrier:

Humana Health Plan of Texas, Inc.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of Humana Health Plan of Texas, Inc. to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200502938
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 19, 2005

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance Code, as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C - H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Humana Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of Humana Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200502939

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: July 19, 2005

◆ ◆ ◆
Texas Lottery Commission

Instant Game Number 580 "Junior Jumbo Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 580 is "JUNIOR JUMBO BUCKS". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 580 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 580.

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, JUMBO SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$3,000.

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. 580 - 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
JUMBO SYMBOL	WINX5
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$3,000	THR THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 580 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) 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: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$40.00 or \$100.

I. High-Tier Prize - A prize of \$3,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (580), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 580-0000001-001.

L. Pack - A pack of "JUNIOR JUMBO BUCKS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 to 005 will be on the top page; tickets 006 and 010 on the next page; etc.; and tickets 246 and 250 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.

M. 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "JUNIOR JUMBO BUCKS" Instant Game No. 580 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 "JUNIOR JUMBO BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches of any YOUR NUMBERS play symbols to the SERIAL NUMBER play symbol, the player wins prize shown for that number. If a player reveals a JUMBO play symbol, the player wins 5 (five) times 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 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 will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. A non-winning prize symbol will never be the same as a winning prize symbol.

E. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

F. The "JUMBO" play symbol will only appear on intended winning tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "JUNIOR JUMBO BUCKS" 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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, 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 "JUNIOR JUMBO BUCKS" Instant Game prize of \$3,000, 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 "JUNIOR JUMBO BUCKS" 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; or

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 "JUNIOR JUMBO BUCKS" 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 "JUNIOR JUMBO BUCKS" 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 Section 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 15,120,000 tickets in the Instant Game No. 580. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 580 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,693,440	8.93
\$2	967,680	15.63
\$4	181,440	83.33
\$5	181,440	125.00
\$10	120,960	125.00
\$20	60,480	250.00
\$40	8,820	1,714.29
\$100	4,662	3,243.24
\$3,000	189	80,000.00

*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 4.70. 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. 580 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. 580, 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-200502954

Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: July 20, 2005



Instant Game Number 590 "Wild Winnings"

1.0 Name and Style of Game.

A. The name of Instant Game No. 590 is "WILD WINNINGS". The play style for Game 1: is "match up with doubler". The play style for Game 2: is "match up with doubler.". The play style Game 3: is: "key symbol match with bonus box". The play style for Game 4: is "key symbol match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 590 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 590.

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: \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$500, \$1,000, \$25,000, \$250,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, W SYMBOL,

HORSESHOE SYMBOL, POT OF GOLD SYMBOL, DIAMOND SYMBOL, COIN SYMBOL, STACK OF BILLS SYMBOL, CHERRY SYMBOL, VAULT SYMBOL, GOLDBAR SYMBOL, CLOVER SYMBOL, BELL SYMBOL, ANCHOR SYMBOL, STAR SYMBOL, CROWN SYMBOL, SEVEN SYMBOL, LEMON SYMBOL, RAINBOW SYMBOL, PIGGYBANK SYMBOL, SPADE SYMBOL, CLUB SYMBOL and MOON 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. 590 - 1.2D

PLAY SYMBOL	CAPTION
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUN
\$500	FIV HUN
\$1,000	ONE THOU
\$25,000	25 THOU
\$250,000	25 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
W SYMBOL	WILD
HORSE SHOE SYMBOL	HRSHOE
POT OF GOLD SYMBOL	PTGOLD
DIAMOND SYMBOL	DIAMND
COIN SYMBOL	COIN
STACK OF BILLS SYMBOL	MONEY
CHERRY SYMBOL	CHERRY
VAULT SYMBOL	VAULT
GOLD BAR SYMBOL	GLDBR
CLOVER SYMBOL	CLOVER
BELL SYMBOL	BELL
ANCHOR SYMBOL	ANCHOR
STAR SYMBOL	STAR
CROWN SYMBOL	CROWN
7 SYMBOL	SEVEN
LEMON SYMBOL	LEMON
RAINBOW SYMBOL	RAINBW
PIGGY BANK SYMBOL	PGYBNK
SPADE SYMBOL	SPADE
CLUB SYMBOL	CLUB
MOON SYMBOL	MOON

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 590 - 1.2E

CODE	PRIZE
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) 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: 0000000000000.

G. Low-Tier Prize - A prize of \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100 or \$500.

I. High-Tier Prize - A prize of \$1,000, \$25,000 or \$250,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (590), 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: 590-0000001-001.

L. Pack - A pack of "WILD WINNINGS" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WILD WINNINGS" Instant Game No. 590 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 "WILD WINNINGS" Instant Game is determined once the latex on the ticket is scratched off to expose 51 (fifty-one)

Play Symbols. In Game 1: if a player reveals two identical numbers in the same horizontal row the player wins prize shown for that row. If a player reveals a wild symbol "W" play symbol the player wins double the prize indicated. In the Game 2: if a player matches three identical amounts the player wins that amount indicated. If a player matches two identical amounts and reveals a wild symbol "W" play symbol the player wins double the amount indicated. In Game 3: if a player matches any of YOUR PRIZE AMOUNTS play symbols to any of the LUCKY PRIZE AMOUNTS play symbols the player wins amount indicated. If a player reveals a wild symbol "W" play symbol in the bonus box the player wins all ten YOUR PRIZE AMOUNTS shown. In Game 4: If a player matches any of YOUR SYMBOLS play symbols to any of the WINNING SYMBOLS the player wins prize shown below that symbol. If a player reveals a WILD symbol "W" play symbol, the player wins double the prize shown below 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 51 (fifty-one) 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 51 (fifty-one) 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 51 (fifty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 51 (fifty-one) 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 within a book will not have identical patterns.

B. Game 1: This play area consists of six (6) play symbols and two (2) prize symbols.

C. Game 1: Players can win up to two (2) times in this play area.

D. Game 1: The "W" symbol will only appear on winning tickets.

E. Game 2: This play area consists of six (6) prize symbols.

F. Game 2: Players can win once in this play area.

G. Game 2: No more than one (1) "W" Symbol on a ticket.

H. Game 2: No more than one pair of like prize symbols will appear on a ticket containing a "W" Symbol.

I. Game 2: No more than two pairs of like prize symbols will appear on a ticket, which does not contain a "W" Symbol.

J. Game 3: The play area consists of three (3) Lucky Prize Amounts, ten (10) Your Prize Amounts, and one (1) Bonus symbol.

K. Game 3: Players can win up to ten (10) times in this play area.

L. Game 3: Non-winning tickets will never have a Your Prize Amount that matches any of the Lucky Prize Amounts.

M. Game 3: On winning and non-winning tickets, the three (3) Lucky Prize Amounts will be different.

N. Game 3: Non-winning tickets will never have three (3) or more identical Your Prize Amounts.

O. Game 3: On winning tickets, all non-winning prize amounts to be different from the winning prize amount.

P. Game 3: The "W" symbol will appear in the Bonus Box and win all 10 Your Prize Amounts as per the prize structure.

Q. Game 4: The play area consists of three (3) Winning Symbols, ten (10) Your Symbols and ten (10) Prize Amounts.

R. Game 4: Players can win up to ten (10) times in this play area.

S. Game 4: No duplicate non-winning Your Symbols on a ticket.

T. Game 4: All Winning Symbols will be unique.

U. Game 4: Non-winning tickets will never have three (3) or more identical prize symbols.

V. Game 4: Non-winning prize symbols will not match a winning prize symbol on a ticket.

W. Game 4: The "W" symbol will be used to win as specified in the prize structure.

X. Game 4: The "W" symbol will be never appear more than once on a ticket in this play area.

Y. Game 4: The "W" symbol will only appear on winning tickets.

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD WINNINGS" Instant Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$100 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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$50.00, \$100 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 "WILD WINNINGS" Instant Game prize of \$1,000, \$25,000 or \$250,000, 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 "WILD WINNINGS" 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; or
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 "WILD WINNINGS" 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 "WILD WINNINGS" 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 Section 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 3,960,000 tickets in the Instant Game No. 590. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 590 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	660,000	6.00
\$20	277,200	14.29
\$30	113,520	34.88
\$50	85,140	46.51
\$100	66,924	59.17
\$500	165	24,000.00
\$1,000	132	30,000.00
\$25,000	10	396,000.00
\$250,000	3	1,320,000.00

*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 3.29. 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. 590 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. 590, 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-200502955
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: July 20, 2005

◆ ◆ ◆
Texas Public Finance Authority

Request for Proposals for Bond Counsel

The Texas Public Finance Authority (the "Authority") is requesting proposals for bond counsel services. The deadline for proposal submission is 5:00 p.m., August 12, 2005.

The Authority's Board of Directors (the "Board") will make its selection based upon demonstrated competence and qualifications. Firms responding to the Request for Proposal must maintain a Texas office staffed with personnel who are responsible for providing bond counsel services to the Authority. By the Request for Proposal, however, the Board has not committed itself to employ bond counsel nor does the suggested scope of service or term of agreement therein require that the bond counsel be employed for any or all of those purposes. The Board reserves the right to make those decisions after receipt of proposals and the Board's decision on these matters is final. The Board

reserves the right to negotiate individual elements of the Firm's proposal and to reject any and all proposals.

Copies of the Request for Proposal may be obtained from the Authority's website at www.tpfa.state.tx.us or Paula Hatfield, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463-5544.

TRD-200502897
 Kimberly Edwards
 Executive Director
 Texas Public Finance Authority
 Filed: July 15, 2005

◆ ◆ ◆
Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On July 14, 2005, nii communications, ltd. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60240. Applicant intends to reflect a change in ownership/control.

The Application: Application of nii communications, inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31353.

Persons wishing to 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 no later than August 3, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31353.

TRD-200502895

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 15, 2005



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 July 13, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of HBF Communications, Incorporated, doing business as HBF Group, Incorporated, for a Service Provider Certificate of Operating Authority, Docket Number 31352 before the Public Utility Commission of Texas.

Applicant intends to provide database services to the public and privately to telecommunications carriers as their agents.

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 August 3, 2005. 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 31352.

TRD-200502894
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 15, 2005



Notice of Filing Made for Approval of a Tariff Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed by Valley Telephone Cooperative, Incorporated with the Public Utility Commission of Texas (commission) on June 30, 2005, to make a tariff rate change.

Docket Title and Number: Application of Valley Telephone Cooperative, Incorporated (Valley Telephone) for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171. Tariff Control Number 31306.

The Application: Valley Telephone has filed a statement of intent with the Commission to increase the charge for Directory Assistance Service throughout its service territory from \$0 to \$0.50 for all local or intraLATA Directory Assistance calls after a monthly allowance of three free calls. This new rate will apply to all Directory Assistance calls, whether direct-dialed, placed via an operator, or billed to a credit card or telephone number other than the originating number. This rate increase will apply to all customers who utilize local or intraLATA Directory Assistance Service.

For a copy of the proposed tariffs or for further information regarding this application, customers should contact Valley Telephone Cooperative, Inc. at 480 South 6th Street, Raymondville, Texas 78580 or call (956) 689-2484 during regular business hours.

Customers have a right to petition the commission for a review of this application. If the Commission receives a complaint relating to the proposed change from either an affected intrastate access customer or a group of affected intrastate access customers that, the preceding 12 months, the company billed more than 10% of its total intrastate gross access revenues, the application will be docketed. The deadline to comment or request to intervene in this proceeding is September 12, 2005. Persons wishing to comment or intervene should contact the Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission at (512) 936-7120 or in Texas (toll-free) at 1-888-782-8477. Hearing-and speech-impaired individuals with text telephones (TTY) may contact the commission (toll-free) at 1-800-735-2988.

TRD-200502875
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 14, 2005



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on June 10, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or around July 22, 2005.

Docket Title and Number: Sugar Land Telephone Company's Application for Approval of LRIC Study to Implement a New Service, National and Reverse Directory Assistance, Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 31342.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 31342. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at 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 telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989.

TRD-200502876
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 14, 2005



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on July 18, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or around July 28, 2005.

Docket Title and Number: CenturyTel of San Marcos, Inc.'s Application for Approval of LRIC Study For a Promotion of Business Line Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 31372.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 31372. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at 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 telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 31372.

TRD-200502941
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 19, 2005



Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on July 12, 2005, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Valor Telecommunications of Texas, LP #1, doing business as Valor Telecom (Valor), request for 100 consecutive number blocks in NXXs for the Trinity Exchange and to request expedited action of the matter.

Docket Title and Number: Petition of Valor Telecommunications of Texas, LP #1, doing business as Valor Telecom, for Waiver of NeuStar's Denial of NXX Code Request and Request for Expedited Action. Docket Number 31344.

The Application: Valor submitted a petition to the Pooling Administrator (PA) to provide it with 100 consecutive number blocks in NXXs for the Trinity Exchange.

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 August 3, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31344.

TRD-200502877
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 14, 2005



Texas Department of Transportation

Request for Competing Proposals and Qualifications

Pursuant to the authority granted under Texas Transportation Code, Chapter 223, Subchapter E ("Enabling Legislation"), the Texas Department of Transportation ("TxDOT") may enter into a comprehensive development agreement with a private entity for the design, development, construction, financing, maintenance, or operation of toll projects on the state highway system. The Enabling Legislation provides a process for TxDOT to accept and process unsolicited proposals

for such projects and prescribes requirements for an unsolicited proposal. If a decision is made to further evaluate an unsolicited proposal, the Enabling Legislation requires that TxDOT publish a request for competing proposals and qualifications in the *Texas Register*. Pursuant to the Enabling Legislation, the Texas Transportation Commission ("commission") has promulgated rules located at Title 43, Texas Administrative Code, §§27.1 - 27.5 ("Rules"), governing the submission and processing of unsolicited proposals and providing for publication of notice that TxDOT is seeking competing proposals and qualifications for development of a toll project with private involvement. The commission has received an unsolicited proposal and made a determination to further evaluate the unsolicited proposal.

TxDOT received an unsolicited proposal on April 27, 2005 from Zachry American Infrastructure ("Zachry American") and Cintra Concesiones de Infraestructuras de Transporte ("Cintra") for development of a proposed toll project along Loop 1604 from SH 151 to I-10 on the east side of the City of San Antonio, and along US 281 from Loop 1604 north to approximately Borgfeld Road. The proposed toll project is approximately 45 miles long, and is located along the US 281 and Loop 1604 corridors in Bexar County. On June 30, 2005, in Minute Order 110112, the commission authorized TxDOT to commence the unsolicited proposal procurement process under the Enabling Legislation and the Rules.

Through this notice, TxDOT is seeking competing Proposals and Qualifications Submittals ("PQS") in response to a Request for Competing Proposals and Qualifications ("RFPQ") for development of a proposed toll project along Loop 1604 from SH 151 to I-10 on the east side of the City of San Antonio, and along US 281 from Loop 1604 north to approximately Borgfeld Road, as well as other potential facilities to the extent necessary for connectivity, mobility, safety, and financing. TxDOT intends to evaluate the unsolicited proposal submitted by Zachry American and Cintra and may request submission of a detailed proposal, potentially leading to negotiation, award, and execution of a comprehensive development agreement. TxDOT will accept for simultaneous consideration any PQS received in accordance with the Enabling Legislation and the Rules by the PQS due date of October 27, 2005. TxDOT anticipates issuing the RFPQ, receiving and analyzing the PQSs, developing a shortlist of proposing entities or consortia, and issuing a request for detailed proposals ("RFDP") to the shortlisted entities. After review and a best value evaluation of the responses to the RFDP, TxDOT may negotiate and enter into a comprehensive development agreement for the project.

RFPQ Evaluation Criteria. PQSs will be evaluated by TxDOT for shortlisting purposes using the following general criteria: relative strength and depth of entity qualifications, personnel qualifications, financial qualifications and legal qualifications; relative strength, feasibility and desirability of the proposed conceptual project development plan; and relative strength, feasibility and desirability of the proposed conceptual project financing plan. The specific criteria under the foregoing categories will be identified in the RFPQ, as will the relative weighting of the criteria.

Release of RFPQ and Due Date. TxDOT currently anticipates that the RFPQ will be available on July 29, 2005. Copies of the RFPQ will be available at TxDOT's offices: Texas Department of Transportation, Texas Turnpike Authority Division, 125 E. 11th Street, 5th Floor, Austin, Texas 78701, or on the following website: <http://www.dot.state.tx.us>. PQSs will be due on October 27, 2005.

TRD-200502953

Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: July 20, 2005

◆ ◆ ◆
University of North Texas

Notice of Request for Information (RFI) for Outside Legal Services Related to Intellectual Property Matters

The University of North Texas System (UNT System) requests information from law firms interested in representing its component institution the University of North Texas (UNT) in intellectual property matters. This RFI is issued to establish (for the time frame beginning September 1, 2005 to August 31, 2006) a referral list from which the UNT System, by and through its Office of Vice Chancellor and General Counsel, will select appropriate counsel for representation on specific intellectual property matters as the need arises.

Description: The UNT System comprises one health institution and two academic institutions located in three cities in Texas. Research activities and other educational pursuits at UNT produce intellectual property that is carefully evaluated for protection and licensing to commercial entities. Subject to approval by the Office of the Attorney General (OAG) for the State of Texas, UNT will engage outside counsel to prepare, file, prosecute, and maintain patent applications in the United States and other countries; secure copyright protection for computer software; prepare, file and prosecute applications to register trademarks and service marks in the United States and other countries; advise and/or prepare material transfer agreements, license agreements and other related agreements; and advise on complex matters relating to intellectual property and technology transfer. UNT also will engage outside counsel from time to time to pursue litigation against infringers of these intellectual property rights and to handle other related matters. The UNT System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of UNT System's Office of Vice Chancellor and General Counsel.

Responses; Qualifications: Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services requested, including the firm's prior experience in intellectual property-related matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and intellectual property matters in particular; (2) the names, experience, and scientific or technical expertise of the attorneys and patent agents who may be assigned to work on such matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and patent agent who may be assigned to perform services in relation to UNT's intellectual property matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UNT System, UNT, or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the UNT System, UNT and the OAG for the State of Texas.

The law firm(s) or attorney(s) will be selected based on demonstrated knowledge and experience, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of

UNT, and reasonableness of proposed fees. The successful firm(s) or attorney(s) will be required to sign the Texas OAG's Outside Counsel Agreement, and execution of a contract with UNT is subject to approval by the Texas OAG. UNT reserves the right to accept or reject any or all responses submitted. UNT is not responsible for and will not reimburse any costs incurred in developing and submitting a response.

Format and Person to Contact: Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail, facsimile, or electronic mail, or delivered in person, marked "Response to Request for Information," and addressed to Nancy Footer, JD, Vice Chancellor & General Counsel, University of North Texas System, P.O. Box 310907, Denton, TX 76203-0907; or email nfooter@unt.edu or fax to (940) 369-7026.

Deadline for Submission of Response: All responses must be received at the address set forth above no later than 5:00 p.m., August 15, 2005. Questions regarding this request may be directed to Nancy Footer at (940) 565-2717.

TRD-200502944
Sandra Shelton
Director of Purchasing and Payment Services
University of North Texas
Filed: July 20, 2005

◆ ◆ ◆
Notice of Request for Information (RFI) for Outside Legal Services Related to Real Estate, Oil and Gas, and Mineral Interest Matters

The University of North Texas System (UNT System) requests information from law firms interested in representing the agency and its component institutions in real estate, oil and gas, and mineral interest matters. This RFI is issued to establish (for the time frame beginning September 1, 2005 to August 31, 2006) a referral list from which the UNT System, by and through its Office of Vice Chancellor and General Counsel, will select appropriate counsel for representation on specific real estate, oil and gas, and/or mineral interest matters as the need arises.

Description: The UNT System is comprised of one health institution, the University of North Texas Health Science Center at Fort Worth, and two academic institutions, the University of North Texas and the University of North Texas System Center at Dallas, which are located in three different cities in Texas. Subject to approval by the Office of the Attorney General (OAG) for the State of Texas, the UNT System will engage outside counsel to provide advice and counsel in regard to a broad range of real estate matters involving the Agency and the Agency's component institutions, which shall include but not be limited to addressing issues related to transactions involving real estate, oil and gas, and mineral interests. Counsel will evaluate proposals, review surveys, examine title and title commitments, assist in curing title exceptions and/or defects, draft, review and negotiate contracts and lease agreements, and provide such other guidance and expertise as may be necessary to protect and develop the Agency's varied real estate interests, oil and gas interests, and/or mineral interests in certain properties. Counsel may further be called upon to assist in the acquisition of real estate property and/or mineral interests in certain properties. The UNT System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of UNT System's Office of Vice Chancellor and General Counsel.

Responses; Qualifications: Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services requested, including the firm's prior experience in real estate, oil and gas and mineral interest -related matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and real estate, oil and gas, and mineral interest matters in particular; (2) the names and experience of the attorneys who may be assigned to work on such matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who may be assigned to perform services in relation to real estate, oil and gas and mineral interest matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UNT System, a component institution of the UNT System, or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the UNT System, the component institutions of the UNT System and the OAG for the State of Texas.

The law firm(s) or attorney(s) will be selected based on demonstrated knowledge and experience, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of the UNT System, and reasonableness of proposed fees. The successful firm(s) or attorney(s) will be required to sign the Texas OAG's Outside Counsel Agreement, and execution of a contract with the UNT System is subject to approval by the Texas OAG. The UNT System reserves the right to accept or reject any or all responses submitted. The UNT System is not responsible for and will not reimburse any costs incurred in developing and submitting a response.

Format and Person to Contact: Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail, facsimile, or electronic mail, or delivered in person, marked "Response to Request for Information," and addressed to Nancy Footer, JD, Vice Chancellor & General Counsel, University of North Texas System, P.O. Box 310907, Denton, TX 76203-0907; or email nfooter@unt.edu or fax to (940) 369-7026.

Deadline for Submission of Response: All responses must be received at the address set forth above no later than 5:00 p.m., August 15, 2005.

Questions regarding this request may be directed to Nancy Footer at (940) 565-2717.

TRD-200502943
Sandra Shelton
Director of Purchasing and Payment Services
University of North Texas
Filed: July 20, 2005



Public Notice--Award of a Major Consulting Contract

Description of Activities Consultant Will Conduct:

To assist the University of North Texas Office of Research Services in developing and maximizing its facilities and administrative rate proposal submission to the Dallas Office of the Department of Health and Human Services, Division of Cost Allocation.

Name and Business Address of Consultant:

Maximus, Inc.
60 Revere Drive, Suite 200
Northbrook, Illinois 60062

Total Value and Beginning and Ending Dates of Contract:

Value: \$150,000.00

Beginning Date: June 22, 2005

Ending Date: Continues until the final negotiate Department of Health and Human Services Facilities and Administrative Rate Agreement

Dates on Which Documents, Films, Recordings, or Reports that Consultant is required to present are due:

Date: Various dates--within three weeks of a request from the University.

TRD-200502869
Sandy Shelton
Contract Administration Manager
University of North Texas
Filed: July 13, 2005



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 29 (2004) is cited as follows: 29 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 "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 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 subscription information, see the back cover or call the Texas Register at (800) 226-7199.

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 (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The 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 (1-800-356-6548), and West Publishing Company (1-800-328-9352).

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

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

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

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

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). 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).

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

Change of Address

(Please fill out information below)

Paper Subscription

One Year \$240 First Class Mail \$300

Back Issue (\$10 per copy)

_____ Quantity

Volume _____, Issue # _____.

(Prepayment required for back issues)

NAME _____

ORGANIZATION _____

ADDRESS _____

CITY, STATE, ZIP _____

PHONE NUMBER _____

FAX NUMBER _____

Customer ID Number/Subscription Number _____

(Number for change of address only)

Payment Enclosed via Check Money Order

Mastercard/VISA Number _____

Expiration Date ____/____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.
Do not use this form to renew subscriptions.

Visit our home on the internet at <http://www.sos.state.tx.us>.

Periodical Postage

PAID

Austin, Texas
and additional entry offices
