TEXAS REGISTER

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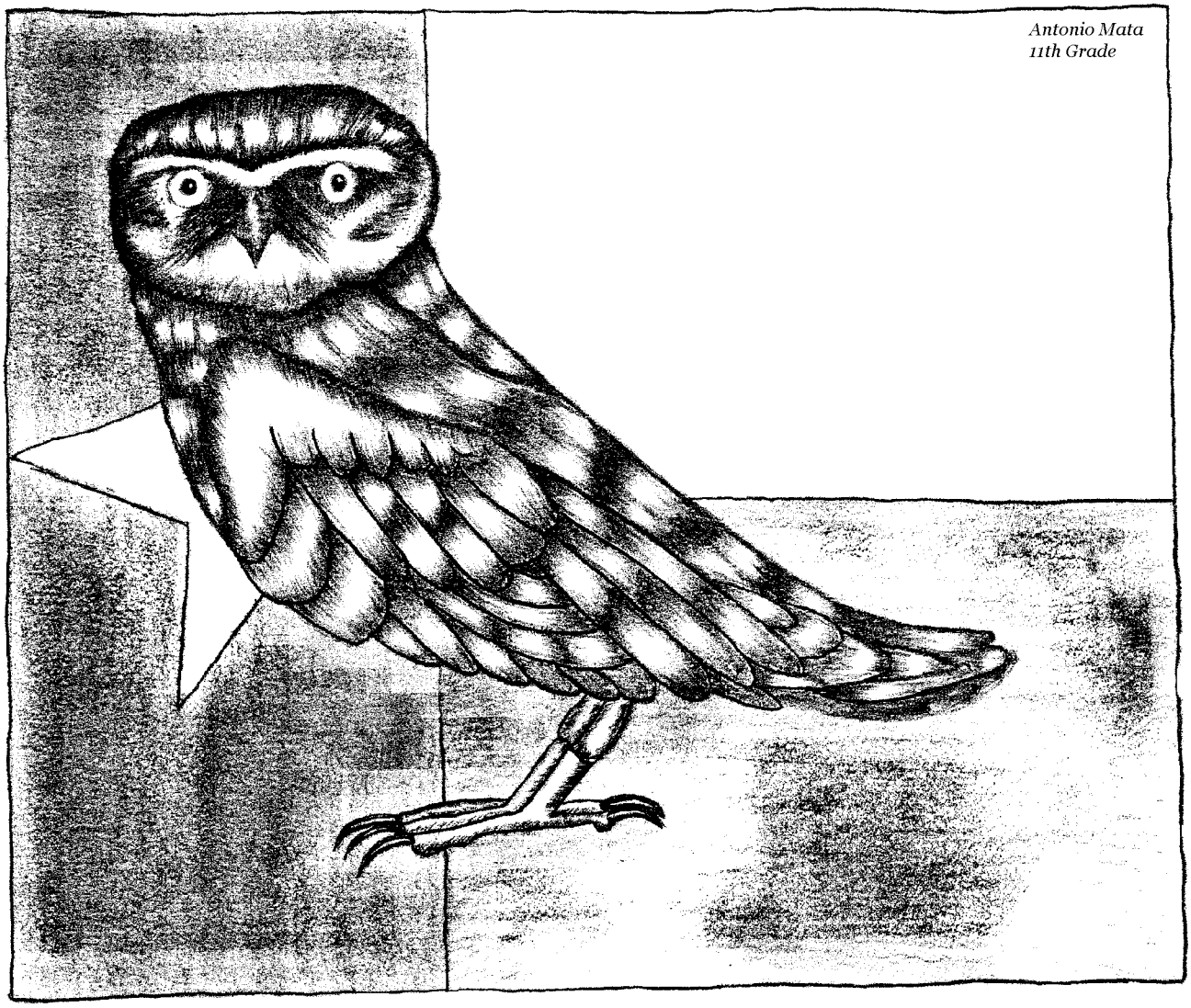

Antonio Mata
11th Grade

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

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

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IN THIS ISSUE

Open Meetings

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

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

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: Subadmin@sos.state.tx.us

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

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

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

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

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

Appointments

Appointments for December 9, 2005

Appointed to the Upper Colorado River Authority for a term to expire February 1, 2007, John Nikolauk of Eldorado (replacing Ray Alderman of Winters whose term expired).

Appointed to the Upper Colorado River Authority for a term to expire February 1, 2007, Ralph Edward Hoelscher of Miles (Mr. Hoelscher is being reappointed).

Appointed to the Upper Colorado River Authority for a term to expire February 1, 2007, Dorris Sonnenberg of Bronte (Ms. Sonnenberg is being reappointed).

Appointed to the Upper Colorado River Authority for a term to expire February 1, 2009, Fred R. Campbell of Paint Rock (Mr. Campbell is being reappointed).

Appointed to the Upper Colorado River Authority for a term to expire February 1, 2009, Hope Wilson Huffman of San Angelo (Ms. Huffman is being reappointed).

Appointed to the Upper Colorado River Authority for a term to expire February 1, 2011, Hyman Dale Sauer of Eldorado (Mr. Sauer is being reappointed).

Appointed to the Upper Colorado River Authority for a term to expire February 1, 2011, Winfree Leroy Brown of Christoval (replacing Raymond Meza of San Angelo who resigned).

Appointed to the Upper Colorado River Authority for a term to expire February 1, 2011, Jeffie Harmon Roberts of Robert Lee (Ms. Roberts is being reappointed).

Appointed to the Health and Human Services Council for a term to expire February 1, 2009, Fernando M. Treviño of Southlake (replacing Gwen Shea who resigned).

Appointed to the Health and Human Services Council for a term to expire February 1, 2011, Mi Yun (Maryann) Choi, M.D. of Georgetown (Reappointment).

Appointed to the Health and Human Services Council for a term to expire February 1, 2011, Robert A. Valadez of San Antonio (Reappointment).

Appointed to the Health and Human Services Council for a term to expire February 1, 2011, Kathleen Angel of Austin (Reappointment).

Appointed to the Texas Medical Board District Three Review Committee for a term to expire January 15, 2008, Lee S. Anderson, M.D. of Fort Worth (replacing Robert Henderson of Amarillo whose term expired).

Appointed as the Injured Employee Public Counsel, pursuant to HB 7, 79th Legislature, Regular Session, for a term to expire February 1, 2007, Norman W. Darwin of Weatherford.

Appointments for December 14, 2005

Appointed to the Governing Board for the Texas School for the Deaf for a term to expire January 31, 2009, Angela Wolf of Austin (replacing Nancy Munger of Kyle whose term expired).

Appointed to the Governing Board for the Texas School for the Deaf for a term to expired January 31, 2011, Jean F. Andrews, Ph.D. of Beaumont (Dr. Andrews is being reappointed).

Appointed to the Governing Board for the Texas School for the Deaf for a term to expired January 31, 2011, Shalia H. Cowan, Ed.D. of Dripping Springs (replacing Laura Metcalf of San Antonio whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2006, Sue Pennington Ford of Bedford (replacing Ross Sweat who is deceased).

Appointed to the State Independent Living Council for a term to expire October 24, 2007, Morgan Talbot of McAllen (Mr. Talbot is being reappointed).

Appointed to the State Independent Living Council for a term to expire October 24, 2007, Scotty Sherrill of Nacogdoches (replacing Lisa Fittipaldi whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2007, Donald L. Landry of Groves (replacing Doug Drey who is deceased).

Appointed to the State Independent Living Council for a term to expire October 24, 2007, Robert Hawkins of Bellmead (replacing Joan Knoll whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2008, Paula Jean Margeson of Plano (Ms. Margeson is being reappointed).

Appointed to the State Independent Living Council for a term to expire October 24, 2008, Marcia K. Ingram of Midland (Ms. Ingram is being reappointed).

Appointed to the State Independent Living Council for a term to expire October 24, 2008, Tracey Michol of Kingwood (replacing Jonas Schwartz whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2008, Kristen Elizabeth Jones of Houston (replacing Jesse Seawell whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2008, Larry Gardner of Cedar Park (replacing Martha Bagley who no longer qualifies).

Appointed to the State Independent Living Council for a term to expire October 24, 2008, Marc Gold of Austin (replacing Doug Dittforth who no longer qualifies).

Appointments for December 20, 2005

Appointed as Judge of the 283rd Judicial District Court for a term until the next General Election and until her successor shall be duly elected

and qualified, Becky Gregory of Dallas. Ms. Gregory is replacing Judge Vickers Cunningham who resigned.

Appointed to the Texas Council on Austin and Pervasive Developmental Disorders for a term to expire February 1, 2007, Manuel Macedonio Vela of Harlingen (replacing Barbara Villanueva of Plano whose term expired).

Appointments for December 21, 2005

Appointed as the District Attorney for Lubbock County for a term until the next General Election and until his successor shall be duly elected and qualified, Matthew Dane Powell of Lubbock. Mr. Powell is replacing William Sowder who was appointed as Judge of the 99th Judicial District Court.

Appointed to the Study Commission on Transportation Financing, pursuant to SB 1713, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Ted Houghton of El Paso.

Appointed to the Study Commission on Transportation Financing, pursuant to SB 1713, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Joseph Krier of San Antonio.

Appointed to the Study Commission on Transportation Financing, pursuant to SB 1713, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, William B. Madden of Dallas.

Appointed to the Sabine River Compact Commission for a term to expire July 12, 2010, Frank Edward Parker of Center (replacing Robert Reeves of Center who resigned).

Rick Perry, Governor

TRD-200600031

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Executive Order

RP 53

Relating to the creation of college readiness standards and programs for Texas public school students.

WHEREAS, preparation for college and other post secondary opportunities is essential for Texas students and the Texas economy; and

WHEREAS, the long-term economic and social benefits of a well-educated population will benefit the state of Texas; and

WHEREAS, the number of Texas students enrolling in institutions of higher education and completing degree programs must increase for Texas to be prosperous in the future; and

WHEREAS, many Texas high school graduates enrolled in institutions of higher education require remediation programs to prepare them for college-level course work; and

WHEREAS, Texas students need a strong foundation in Science, Technology, Engineering, and Mathematics to be successful in a competitive world economy; and

WHEREAS, the Commissioner of Education and the Commissioner of Higher Education have the authority to implement innovative programs to ensure students have the skills necessary to succeed in college;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

Cooperation. The Texas Education Agency and the Texas Higher Education Coordinating Board shall work together to enhance college-readiness standards and programs for Texas public schools.

Information and Opportunities. In establishing such standards and programs, each agency shall work to ensure that all Texas students are afforded information and opportunities for post-secondary education and training including the following:

The creation of Science, Technology, Engineering, and Mathematics Academies throughout the State of Texas, to improve student college readiness.

The creation of a system of college readiness indicators, including the reporting of higher education remediation rates on public high school report cards.

The creation of an electronic academic records system to facilitate the transfer of high school transcripts between school districts and between school districts and institutions of higher education.

The development of a series of voluntary end-of-course assessments in Science, Mathematics, and other subjects, currently assessed by the 11th grade Texas Assessment of Knowledge and Skills, to measure student performance; and provide for a potential alternative to the 11th grade Texas Assessment of Knowledge and Skills.

The creation of a pilot financial assistance program for economically disadvantaged students taking college entrance exams, such as the Scholastic Achievement Test (SAT) and American College Test (ACT).

The creation of summer residential programs at Texas institutions of higher education for gifted and talented high school students to provide enhanced learning opportunities.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 16th day of December, 2005.

Rick Perry, Governor

TRD-200600037

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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-0423-GA

Requestor:

The Honorable Robert R. Puente

Chair, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether certain provisions of a 1959 agreement between Collin County, the Collin County Soil Conservation District, and the U.S. Department of Agriculture comport with article XI, section 7 of the Texas Constitution (RQ-0423-GA)

Briefs requested by January 19, 2006

RQ-0424-GA

Requestor:

The Honorable David Swinford

Chair, Committee on State Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the Comptroller, at a Legislator's request, to "research, analyze and report on the Texas Residential Construction Commission Act and its impact on Texas homeowners and the Texas economy" (RQ-0424-GA)

Briefs requested by January 28, 2006

RQ-0425-GA

Requestor:

The Honorable Bruce Isaacks

Denton County Criminal District Attorney

1450 East McKinney, Suite 3100

Post Office Box 2850

Denton, Texas 76202

Re: Whether a county or district clerk may charge an administrative fee for funds deposited as cash bail bonds: Reconsideration of Attorney General Opinion No. JC-0163 (1999) (RQ-0425-GA)

Briefs requested by January 28, 2006

RQ-0426-GA

Requestor:

The Honorable Jeff Wentworth

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether a city building official may rely on a professional engineer's seal and certification that a plat or plan complies with the city's building codes (RQ-0426-GA)

Briefs requested by January 28, 2006

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

TRD-200600029
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: January 4, 2006

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EMERGENCY RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 352. QUALITY ASSURANCE FEE

1 TAC §352.10

The Texas Health and Human Services Commission is renewing the effectiveness of the emergency adoption of new §352.10, for a 60-day period. The text of the new section was originally published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4767).

Filed with the Office of the Secretary of State on December 28, 2005.

TRD-200506126
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 30, 2005
Expiration date: February 27, 2006
For further information, please call: (512) 424-6578

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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 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 139. ENFORCEMENT

SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35

The Texas Board of Professional Engineers proposes amendments to §139.35, relating to Sanctions and Penalties. The proposed amendments reorganize the Sanction and Penalty table to include an Administrative classification and revise some proposed penalties.

The proposed amendments reorganize the Sanction and Penalty table to include an Administrative classification, and relocate certain current violations to this new classification. The Board has also reviewed and revised the suggested sanctions for the Administrative violations.

C.W. Clark, P.E., Director of Compliance & Enforcement for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Clark has determined that there may be a minor fiscal impact to the agency and licensees. There is a minor fiscal impact to individuals required to comply with the rule as proposed, as the sanctions related to Administrative violates have been modified. There is no effect to small or micro businesses.

Mr. Clark also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment will be clarification of the Compliance & Enforcement process and Sanction and Penalty table.

Comments may be submitted no later than 30 days after the publication of this notice to C.W. Clark, P.E., Director of Compliance & Enforcement, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-5715.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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

§139.35. Sanctions and Penalties.

(a) The board, the executive director, an administrative law judge, and the participants in an informal conference may arrive at a greater or lesser sanction than suggested in these rules. The minimum administrative penalty shall be $100 per violation. The maximum administrative penalty shall be $3000 per violation. Pursuant to §1001.502(a) of the Act, each day a violation continues or occurs is considered a separate violation for the purpose of assessing an administrative penalty. Allegations and disciplinary actions will be set forth in the final board order and the severity of the disciplinary action will be based on the following factors:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of prior violations of the respondent;

(3) the severity of penalty necessary to deter future violations;

(4) efforts or resistance to efforts to correct the violations;

(5) the economic harm to property or the environment caused by the violation; and

(6) any other matters impacting justice and public welfare, including any economic benefit gained through the violations.

(b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules:
Figure: 22 TAC §139.35(b)

(c) - (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 January 2, 2006.

TRD-200600003
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 440-7723

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PART 7. STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS

CHAPTER 141. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §§141.1 - 141.24

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) proposes amendments to §§141.1 - 141.24, concerning the licensure and regulation of hearing instrument fitters and dispensers.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 141.1 - 141.24 have been reviewed and the committee has determined that the reasons for adopting the sections continue to exist because rules relating to the licensure and regulation of hearing instrument fitters and dispensers are needed in order to protect and promote public health, safety, and welfare.

The amendments are the result of the comprehensive rule review undertaken by the committee and the committee's staff. In general, each section was reviewed and proposed for amendment in order to ensure clarity; to ensure that the rules reflect current legal, policy, and operational considerations; to ensure accuracy; to improve draftsmanship; and to make the rules more accessible, understandable, and usable, to the extent possible.

SECTION BY SECTION SUMMARY

The amendment to §141.1 is proposed to improve draftsmanship.

Amendments to §141.2 are proposed to add a definition of "certification of testing equipment" as a means to clarify the intent of the rules; and to modify the definition of "department" to reflect the current name of the agency.

Amendments to §141.3 are proposed to clarify the purpose of each standing subcommittee; to clarify that the executive director is the custodian of the committee's records; to correct inaccurate language; and to improve draftsmanship.

The amendment to §141.4 is proposed to reflect current operating procedure.

The amendment to §141.5 is proposed to delete unnecessary language.

Amendments to §141.6 are proposed to delete unnecessary language and to reflect current operating procedure.

Amendments to §141.7 are proposed to reflect current operating procedure; to eliminate references to requiring notarization of documents; to improve draftsmanship; and to delete unnecessary language.

Amendments to §141.8 are proposed to eliminate references to requiring notarization of documents and to improve draftsmanship.

Amendments to §141.9 are proposed to improve draftsmanship and to eliminate unnecessary language.

The amendment to §141.10 is proposed to improve draftsmanship.

The amendment to §141.11 is proposed to eliminate the option of filing a cash deposit with the committee. A deposit or negotiable security may not be in cash.

The amendment to §141.12 is proposed to improve draftsmanship.

Amendments to §141.13 are proposed to delete unnecessary language; to improve draftsmanship; to reflect two-year license terms; to provide for electronic license renewal forms; to clarify that certification of testing equipment and continuing education documentation shall be submitted only if selected for audit; and to require that licensees maintain continuing education and certification of testing equipment documentation for a period of three years.

Amendments to §141.14 are proposed to delete unnecessary language; to update language relating to two year license terms; to move language relating to credit for publications to a more appropriate subsection; and to clarify expectations regarding the submission of continuing education documentation at the time of audit. The amendment to §141.14(b)(3) provides for the acceptance of no more than 5 contact hours annually of online continuing education courses and manufacturer continuing education courses.

Amendments to §141.15(d) are proposed to require that a person who fails the examination must repeat the hours of direct supervision required for the sections that were failed and to eliminate the requirement that a person may only take the examination three times.

Amendments to §141.16 are proposed to improve draftsmanship; to delete unnecessary language; to require that it is the responsibility of the owner of the dispensing practice to maintain client records; to reduce the time period for maintaining records from five to three years after the latest date of fitting and dispensing of hearing instruments; and to clarify standards for audiometric testing devices and submission of certification of testing equipment.

Amendments to §141.17 are proposed to improve draftsmanship; to delete unnecessary language; to update language to reflect current legal, policy, and operational considerations; to clarify that all disciplinary action and license or application denial proposals shall be followed by written notice of violation and option for formal hearing; to provide that the executive director may accept a complaint that is not on the official form; and to set out procedures relating to the surrender of a license after a complaint has been filed.

Amendments to §141.18 are proposed to improve draftsmanship and clarify the section's purpose.

Amendments to §141.19 are proposed to delete unnecessary and obsolete language.

Amendments to §141.20 are proposed to update the rules to reflect current operating procedure, update obsolete language, and eliminate unnecessary language.

Amendments to §141.21 are proposed to delete unnecessary language and update the section title to accurately reflect its contents.

Amendments to §141.22 are proposed to delete unnecessary language, to improve draftsmanship, to clarify the prohibition on

sexual activity with clients, and to require compliance with the Health Insurance Portability and Accountability Act of 1996.

Amendments to §141.23 and §141.24 are proposed to improve draftsmanship.

FISCAL NOTE

Joyce Parsons, Executive Director, has determined that for each fiscal year of the first five years the sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

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

PUBLIC BENEFIT

Ms. Parsons has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to effectively regulate the practice of fitting and dispensing of hearing instruments in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

The committee has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The committee has determined that the proposed amendments do 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Joyce Parsons, Executive Director, State Board of Examiners in the Fitting and Dispensing of Hearing instruments, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 or by email to fdhi@dshs.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the e-mail subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §402.102, which authorizes the committee to adopt rules necessary for the performance of the committee's duties.

The proposed amendments affect Occupations Code, Chapter 402.

§141.1. Purpose.

This chapter implements [~~The purpose of this chapter is to implement~~] the provisions of Texas Occupations Code, Chapter 402, concerning the licensure and regulation of fitters and dispensers of hearing instruments.

§141.2. Definitions.

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

(1) - (6) (No change.)

(7) Certification of testing equipment--A certificate of calibration, compliance, conformance, or performance.

[~~(7) Board--The Texas Board of Health.~~]

(8) - (12) (No change.)

(13) Department--Department of State Health Services [~~The Texas Department of Health~~].

(14) - (30) (No change.)

§141.3. The Committee.

(a) - (f) (No change.)

(g) Subcommittees.

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

(6) The continuing education subcommittee shall consider matters relating to the continuing education of licensees and permit holders, including the approval of programs and sponsors, and shall make recommendations to the committee as appropriate.

(7) The examination subcommittee shall consider matters relating to the licensure examination, including administration and content, and shall make recommendations to the committee as appropriate.

(8) The applications subcommittee shall consider matters relating to license and permit applications referred by the Executive Director and shall make recommendations to the committee as appropriate.

(9) The complaints subcommittee shall consider matters relating to complaints filed against licensees and permit holders and may propose disciplinary action if a violation of the Act or the rules is substantiated. The subcommittee may also dismiss matters for no violation, for lack of substantiation of a violation, or for lack of jurisdiction. The subcommittee shall make recommendations to the committee as appropriate.

(h) Executive director. The executive director shall:

(1) keep the minutes of [~~on~~] proceedings of the committee and shall be custodian of the files and records of the committee [~~unless another custodian is designated by the committee~~];

(2) - (4) (No change.)

(5) have the responsibility of assembling and evaluating materials submitted for approval as set out in §141.7 of this title (relating to Processing Procedures). Final determination shall be made by the executive director with regard to approval of applications for licensure. Determinations made by the executive director, that propose

denial of licensure are subject to the approval of the applications subcommittee [committee] of the committee; and

(6) (No change.)

(i) (No change.)

(j) Official records of the committee.

(1) Requests for committee records may be made under the Texas Public Information [Open Records] Act, [the] Government Code, Chapter 552. Records which are public may be reviewed by inspection, duplication, or both upon written request.

(2) (No change.)

(3) Applicable cost of duplication shall be paid by the requestor [applicant at the time of or before the duplicated records are sent or given to the applicant]. The charge for copies shall be the same as set by the department for copies.

(k) - (m) (No change.)

§141.4. Licensees and the Committee.

(a) (No change.)

(b) A licensee shall have the responsibility of reporting alleged violations of the Act or this chapter to the staff [committee office].

(c) - (g) (No change.)

§141.5. Client Information.

A licensee shall:

(1) inform each client of the name, address, and telephone number of the committee office for the purpose of reporting violations of the Act [Texas Occupations Code, Chapter 402, (Act),] or this chapter on:

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

(2) - (4) (No change.)

§141.6. Application Procedures.

(a) (No change.)

(b) General.

(1) Unless otherwise[,] indicated, an applicant must submit all required information and documentation of credentials on official committee forms [of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee)].

(2) - (3) (No change.)

(c) (No change.)

[(d) Remittances submitted to the committee in payment of fees may be in the form of a cashier's check or money order.]

(d) [(e)] For all applications and renewal applications, the committee is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(e) [(f)] For all applications and renewal applications, the committee is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(f) [(g)] The fees for administering the Act [Texas Occupations Code, Chapter 402, (Act),] and this chapter shall be as follows:

(1) temporary training permit--$205;

(2) examination fee--$250;

(3) apprentice permit--$205;

(4) licensure fee--$205;

(5) a license issued or renewed for a one-year term--$205;

(6) a license issued or renewed for a two-year term--$405;

(7) duplicate document fee--$25;

(8) continuing education sponsor fee--$500 annually; and

(9) reinstatement fee for a license that was suspended for failure to pay child support--$55. [; and]

[(10) reinstatement fee for a license that was suspended for student loan default--$55.]

§141.7. Processing Procedures.

Committee staff shall comply with the following procedures in processing applications for a temporary training permit, apprentice permit, license, and renewal of a regular license.

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

(4) The materials required for application are as follows:

(A) Application form. The application form shall contain:

(i) specific information regarding personal data, birth date, place of employment, other state licenses and certifications held, felony[,] and misdemeanor convictions, educational background, supervised experience, [and] references, and social security number;

(ii) - (iv) (No change.)

(v) a statement that the applicant understands that materials [new material] submitted to the committee become the property of the committee and are not returnable (unless prior arrangements have been made);

(vi) - (vii) (No change.)

(viii) the applicant's dated [and notarized] signature; and

(ix) the dated [and notarized] signature of the supervisor or supervisors who can formally attest to the applicant's direct supervised experience.

(B) Supervised experience form. The supervised experience forms must be completed by the temporary training permit holder and the supervisor or supervisors and contain:

(i) - (iv) (No change.)

(v) the supervisor's [notarized] signature; and

(vi) the temporary training permit holder's [notarized] signature.

(C) (No change.)

[(D) Applicant's affidavit. The facts in the application shall be sworn to by the applicant before a notary.]

(5) Applications may be denied as follows.

(A) The committee may deny an application if the applicant:

(i) (No change.)

(ii) has failed to remit any applicable fees required by [§402.106 of] the Act or this chapter;

(iii) - (vi) (No change.)

(B) If after review the executive director determines that the application should be denied, the executive director shall ask the applications subcommittee to review the application. The applications subcommittee shall take one of the following actions.

(i) If the subcommittee concurs that the application should be denied, they shall instruct the executive director to give the applicant written notice of the reason for the denial and the opportunity for a formal hearing.

(I) The formal hearing, if requested, shall be conducted in accordance with the provisions of the APA [~~Administrative Procedures Act, Government Code, Chapter 2001~~].

(II) (No change.)

(ii) (No change.)

§141.8. Issuance of Permits.

(a) Temporary training permit.

(1) - (7) (No change.)

(8) A temporary training permit holder shall be required to have at least 160 hours of directly supervised practicum that shall include the following:

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

(C) 25 client hours of hearing instrument evaluation including sound field measurements with recorded and live voice;

(D) - (J) (No change.)

(9) - (11) (No change.)

(b) Apprentice permit.

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

[~~(10) The dated and notarized signature of the supervisor or supervisors who can formally attest to the apprentice permit holder's supervised experience.~~]

(10) [~~(11)~~] The supervised experience forms must be completed by the apprentice permit holder and the supervisor or supervisors and contain:

(A) the name of the temporary permit holder;

(B) the name, address, and licensure status of the temporary permit holder's supervisor and supervisors;

(C) the name and address of the business or organization where the temporary permit holder practices;

(D) the inclusive dates of the supervised experience;

(E) the supervisor's [~~notarized~~] signature; and

(F) the apprentice permit holder's [~~notarized~~] signature.

(c) Other conditions for supervised experience for temporary training permit or apprentice permit.

(1) (No change.)

(2) A supervisor may delegate training activities [~~to another eligible supervisor for the supervision~~] of a temporary training permit holder to another licensee. The supervisor shall be responsible for the day-to-day supervision of a trainee. The supervisor shall also be ultimately responsible for services provided to a client by the temporary training permit holder. A supervisor shall not delegate the responsibility of supervision.

§141.9. Issuance of Licenses.

(a) (No change.)

(b) License certificate. Upon receiving the licensure form and fee, the committee shall issue [~~to the licensee,~~] a license certificate which indicates the licensee's name and license number.

(1) Regular licenses shall bear the signatures of the committee members [~~be signed by the committee members and be affixed with the seal of the committee~~].

(2) Temporary training permits and apprentice permits shall bear the signatures of [~~be signed by~~] the committee president and executive director.

(3) (No change.)

(c) Replacement card. The committee will replace a lost, damaged, or destroyed license certificate or renewal card upon a written request from the licensee and payment for a duplicate document. Requests must include a [~~notarized~~] statement detailing the loss or destruction of the licensee's original license or card or be accompanied by the damaged certificate or card.

(d) (No change.)

§141.10. Reciprocity.

In determining whether the licensing requirements of another jurisdiction are equal to or greater than the licensing requirements of the Act [~~equivalent to or higher than Texas~~], the following criteria shall be considered by the committee:

(1) - (4) (No change.)

§141.11. Filing of a Bond.

(a) (No change.)

(b) A sole proprietor, partnership, corporation, or other legal entity subject to subsection (a) of this section may file with the committee a [~~cash~~] deposit or other negotiable security acceptable to the committee in the amount required in subsection (a) of this section in lieu of a bond.

(c) - (e) (No change.)

§141.12. Surrender of a License or Permit.

(a) Surrender by licensee or permit holder.

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

(3) If no complaint is [~~there is not complaint~~] pending, the committee office may accept the surrender and void the license or permit.

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

§141.13. Renewal of License.

(a) General.

(1) A regular license must be renewed biennially [~~annually or biannually, as determined by the committee~~].

(2) - (6) (No change.)

(7) The deadlines established for renewals, late renewals, and license renewal penalty fees in this section are based on the postmark [~~postmarked~~] date of the documentation submitted by the licensee [~~if legible and on the date stamped at the Texas Department of Health if the postmark is not legible~~].

(8) (No change.)

(9) The committee shall deny renewal if required by the Texas Education Code, §57.491, relating to defaults on guaranteed student loans.

[~~(9) A licensee or permit holder who has been notified of a student loan default shall surrender their license or permit until the loan~~

payment has been resolved to the satisfaction of the National Student Loan Center.]

[(10) A licensee or permit holder shall pay a reinstatement fee as set out in §141.6 of this title (relating to Application Procedures) prior to issuance of the license or permit under this subsection.]

(b) Staggered renewals. The committee shall use a staggered system for license renewals.

(1) (No change.)

(2) Licensure fees will be prorated if the licensee's initial renewal date is determined by the committee to have occurred less than 24 [12] months after the original date of licensure.

(3) (No change.)

(c) License renewal.

(1) At least 45 days prior to the expiration of a regular license, the committee will send notice of license expiration.

[(1) At least 45 days prior to the expiration of a regular license, the committee will send notice to a licensee that includes:]

[(A) the expiration date of the license;]

[(B) a schedule of the renewal and late fees; and]

[(C) the number of hours needed to complete any continuing education requirements.]

(2) A paper or electronic license renewal form shall be made available [furnished] to licensees eligible for renewal. The form shall require the licensee to provide:

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

(3) The committee shall not renew a license until it receives the:

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

(D) [the] documentation showing that the licensee has complied with applicable continuing education requirements if selected for audit.

(4) The committee shall issue a renewal card [certificate] to a licensee who has met all the requirements for renewal. The licensee must display the renewal card [certificate] in association with the license.

(5) - (7) (No change.)

(8) Each license to fit and dispense hearing instruments shall be issued for the term of two years [one year] and shall, unless suspended or revoked, be renewed biennially [annually] on payment of the renewal fee and compliance with this section by the licensee.

(9) (No change.)

(10) If a person's license has been expired for less than [not more than] 90 days, the person may renew the license by paying the required renewal fee and a fee that is one-half of the examination fee for the license to the committee.

(11) - (12) (No change.)

(13) The [Before a license can be renewed, the] committee shall require certification that all testing equipment, both portable and stationary, used by the licensee has been calibrated within one year prior to the renewal date, if the licensee is selected for audit.

(14) A [Before a license can be renewed, a] licensee must demonstrate compliance with the continuing education requirements [of continuing education] established by the committee, if selected for audit [under the Act in §141.14].

(15) (No change.)

(16) Licensees not selected for audit shall maintain all continuing education and certification of testing equipment documentation for a period of three years and shall provide copies if requested by the committee.

[(16) Before a license can be renewed, the licensee must submit a copy of the written contract for services employed by the licensee.]

§141.14. Continuing Education Requirements.

(a) (No change.)

(b) General requirements. A [The committee shall require that a] fitter and dispenser licensed under the Act [Texas Occupations Code, Chapter 402, (Act) and this chapter,] must complete 20 contact hours of continuing education each year. For purposes of this section:

(1) each year begins on the first day of [runs concurrently with] the effective month [date] of a license issued under the Act and this chapter;

(2) (No change.)

(3) Online courses offered by an approved sponsor and courses sponsored by a manufacturer may not make up more than 5 contact hours of the required 20 contact hours. At least 15 contact hours of the required 20 contact hours must be obtained from the acceptable continuing education categories offered by an approved non-manufacturer sponsor as described in subsection (g) of this section.

[(3) no more than 5 contact hours of the 20 contact hours required may be obtained from a course sponsored by a manufacturer.]

(c) (No change.)

[(d) Credit hours for publications. A licensee may be credited with continuing education credit hours for a published book or article written by the licensee that contributes to the licensee's professional competence.]

[(1) No more than five credit hours for preparation of a publication may be claimed by a licensed holder in an annual reporting period.]

[(2) The continuing education subcommittee may grant credit hours based on the degree that the published book or article advanced knowledge regarding the fitting and dispensing of hearing instruments.]

(d) [(e)] Noncompliance. A licensee who has not complied with the continuing education requirements of this section may not be issued a renewal license unless the licensee:

(1) has served in the regular armed forces of the United States [Stated] during any part of the 24 [12] months before the [annual] reporting date;

(2) submits proof from an attending physician that the licensee suffered a serious disabling illness or physical disability that prevented compliance with the requirements of this section during the 24 [12] months before the [annual] reporting date; or

(3) was licensed for the first time during the 24 [12] months before the [annual] reporting date.

(e) [~~(f)~~] If selected for audit, a [~~Attendance. A~~] licensee shall provide written proof of [~~attendance and~~] completion of [~~an~~] approved courses [~~course on a form prescribed by the committee~~].

(f) [~~(g)~~] Renewal period for continuing education. Continuing education requirements for renewal shall begin on the first day of a licensee's renewal period [~~year~~] and end on the last day of the licensee's renewal period [~~year~~].

(g) [~~(h)~~] Course categories. Continuing education shall be acceptable if the education falls in one or more the following categories:

(1) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which are designed to increase professional knowledge related to the practice of fitting and dispensing of hearing instrument and are conducted by persons qualified within their respective professions by appropriate state license or certification where state licensure or certification exists, or in states outside of Texas where licensure or certification does not exist by completion of a degree in audiology or a related field and certification by their respective professional associations if such certification exists;

(2) completion of academic courses at an accredited institution in areas supporting development of skills and competence in the fitting and dispensing of hearing instruments; and

(3) participation or teaching in programs directly related to the fitting and dispensing of hearing instruments (e.g., institutes, seminars, workshops, or conferences) which are approved or offered by an accredited college or university.

(4) A licensee may be credited with continuing education credit hours for a published book or article written by the licensee that contributes to the licensee's professional competence. No more than five credit hours for preparation of a publication may be claimed by a license holder each year. The continuing education subcommittee may grant credit hours based on the degree that the published book or article advanced knowledge regarding the fitting and dispensing of hearing instruments.

(h) [~~(i)~~] Requests for credit. Individuals and organizations may initiate requests for committee approval and hour credit of specific programs for continuing education credit at least 30 days prior to the first scheduled presentation.

(1) Each licensee is responsible for providing the information necessary for the committee to make a determination of the applicability of the program to the continuing education requirements.

(2) The committee is responsible for approving individual continuing education courses. The committee may approve an institute, agency, organization, association, or individual as a continuing education sponsor of continuing education units who pay the continuing education sponsor fee. This will permit the organizations to provide continuing education units for their fitting and dispensing of hearing instrument courses, seminars and conferences. Any organization or individual who meets the required criteria may advertise as approved sponsors of continuing education for licensed fitters and dispensers of hearing instruments.

(3) Sponsors may initiate their own requests and when approval is obtained, shall announce, prior to the commencement of the continuing education activity, the number of hours approved and the content of the continuing education activity as submitted and pre-approved by the committee. When approval is requested by a sponsor, the sponsor shall provide each participant with written documentation of participation which shall set forth that participant's name, the number of approved continuing education hours, the title and date(s) of the program as approved by the committee, and the signature of the sponsor.

(4) Sponsors shall pay a continuing education sponsor fee as set out in §141.6 of this title (relating to Application Procedures) which will be effective for one year from date of receipt.

(i) [~~(j)~~] Evaluation of continuing education programs. Each continuing education program submitted by a licensee or approved sponsor will be evaluated on the basis of the following criteria:

(1) relevance of the subject matter to increase or support the development of skills and competence in the fitting and dispensing of hearing instruments or in areas of studies or disciplines related to fitting and dispensing of hearing instruments;

(2) objectives of specific information and skills to be learned;

(3) subject matter, educational methods, materials, and facilities utilized, including the frequency and duration of sessions, and the adequacy to implement learner objectives; and

(4) sponsorship and leadership of program including:

(A) the name of the sponsoring individual(s) or organization(s);

(B) program leaders, if different from sponsor(s); and

(C) contact person if different from the preceding.

(j) [~~(k)~~] Academic requirements. Completion of academic work shall be in accordance with subsection (i) [~~(j)~~] of this section. Official transcripts from accredited schools [~~school~~] showing completion of hours in appropriate areas for which the licensee received at least a passing grade is required.

(k) [~~(l)~~] Approved credit. The committee shall credit continuing education experience as follows.

(1) Parts of programs which meet the criteria of this section shall be credited on a one-for-one basis with one contact hour of credit for each 55 minutes spent in the continuing education activity.

(2) Teaching in programs which meet the committee's criteria as set out in this section shall be credited on the basis of one clock-hour of credit for one contact hour taught plus two contact hour credits for preparation for each hour taught. No more than 10 of the 20 hours of required continuing education can be credited under this option, and credit may be granted for the same presentation or program not more than twice during any continuing education period. The remaining hours of continuing education required in each renewal period must be obtained under another of the available options in accordance with paragraphs (1) or (3) of this subsection.

(3) Completion of academic work at an institution which meets the accreditation standards acceptable to the committee shall be credited on the basis of 15 contact hours of credit for each semester hour, 10 contact hours of credit for each quarter hour completed and for which a passing grade was received as evidenced on an official transcript.

(l) [~~(m)~~] Reporting. If selected for audit, the [~~The~~] requirements for reporting continuing education shall be as follows.

(1) A licensee may submit the required report at the time of renewal [~~at renewal time~~]. Continuing education must be reported and approved prior to renewal at the end of the renewal period. Each licensee is responsible for ensuring that the committee receives timely notice of the licensee's completion of continuing education activities.

(2) Each report must be accompanied by appropriate documentation of the continuing education claimed on the report as follows:

(A) for a program attended, signed certification by a program leader or instructor of the licensee's participation in the program by certificate, letter or letterhead of the sponsoring agency, or official continuing education validation form of the sponsoring agency;

(B) for teaching or consultation in approved programs, a letter on the sponsoring agency's letterhead giving the name of the program, location, dates, and subjects taught and indicating total clock-hours credited;

(C) for completion of work from accredited schools, an official transcript showing course credit with at least a passing grade; or

(D) for official verification of a course at a regionally accredited academic institution, a letter from the dean of the academic institution or professor which includes the actual number of clock-hours attended.

(m) [~~(n)~~] Disapproved credit. The committee will not give continuing education credit to any licensee for:

(1) education incidental to the regular professional activities of a licensee such as knowledge gained through experience or research;

(2) organization activity such as serving on committees or councils or as an officer in a professional organization; and

(3) any program which does not fit the types of acceptable continuing education in this section.

[~~(o) Mandatory continuing education. The mandatory five of the 20 required continuing education hours will be conveyed in the committee newsletter and renewal packet.~~]

§141.15. Examination.

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

(c) Examination.

(1) The examination shall consist of a written section and a practical section. The examination will consist of the following areas as they relate to the fitting and dispensing of hearing instruments:

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

(G) recording and evaluation of audiograms and speech audiometry to determine the candidacy for a hearing instrument;

(H) - (N) (No change.)

(2) (No change.)

(d) Failure of examination.

(1) (No change.)

(2) If the examinee fails the examination, the examinee must repeat the hours of direct supervision required for the sections that were failed [~~160 hours of direct supervision~~].

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

[~~(5) The examinee may take the examination no more than three times.~~]

§141.16. Conditions of Sale.

(a) Compliance with other state and federal regulations. [~~A licensee or permit holder under Texas Occupations Code, Chapter 402, (Act) shall:~~]

(1) A licensee or permit holder shall adhere to the Federal Food and Drug Administration regulations in accordance with 21 Code of Federal Regulations (CFR) §801.420 and §801.421. [~~;~~]

(2) A licensee or permit holder shall receive a written statement before selling a hearing instrument that is signed by a physician or surgeon duly licensed by the Texas Medical Board [~~Texas State Board of Medical Examiners, one~~] who specializes in diseases of the ear. The written statement shall confirm [~~and states~~] that the client's hearing loss has been medically evaluated during the preceding six-month period and that the client is age 18 or older. The [~~, the~~] licensee may inform the client that the medical evaluation requirement may be waived as long as the licensee:

(A) informs the client that the exercise of the waiver is not in the client's best health interest;

(B) does not encourage the client to waive the medical evaluation; and

(C) gives the client an opportunity to sign a statement on the contract that says: "I have been advised by (licensee's or permit holder's name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician or surgeon who specializes in diseases of the ear) before purchasing one or more hearing instruments. I do not wish to receive a medical evaluation before purchasing a hearing instrument". [~~;~~]

(3) A licensee or permit holder shall not sell a hearing instrument to a person under 18 years of age unless the prospective user, parent, or guardian has presented to the licensee or permit holder a written statement signed by a licensed physician specializing in diseases of the ear that states that the client's hearing loss has been medically evaluated and the client may be considered a candidate for a hearing instrument. The evaluation must have taken place within the preceding six months. [~~; and~~]

(4) A licensee or permit holder shall advise clients who appear to have any of the following otologic conditions to consult promptly with a physician:

(A) - (H) (No change.)

(b) (No change.)

(c) Written contract for services to client - client protection. Upon the sale of any hearing instrument(s) or change of model or serial number of the hearing instrument(s), the licensee or permit holder shall provide the client with a signed, written contract for services containing the following:

(1) - (10) (No change.)

(11) a serial number(s) and follow-up appointment within 30 days after the hearing instrument fitting shall be part of the patient records[~~.~~]; and

(12) the date of the end of the 30 day trial. The date must be a business day, not a weekend, a federal holiday, or a day that the licensee is not open for business.

(d) (No change.)

(e) Record keeping.

(1) The owner of the dispensing practice shall ensure that records are maintained [~~It is the licensee's responsibility to keep records~~] on every client who receives services [~~to whom the licensee renders service~~] in connection with the fitting and dispensing of hearing instruments. Such records shall be preserved for at least three [~~five~~] years after the fitting and dispensing of the hearing instrument(s)

to the client. If other hearing instruments are subsequently fitted and dispensed to that client, cumulative records must be maintained for at least three [~~five~~] years after the latest fitting and dispensing of the hearing instrument(s) to that client. The records must be available for the committee's inspection and shall [~~will~~] include but not be limited to the following:

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

(D) copies of written [~~writing~~] contracts for services and receipts executed in connection with the fitting and dispensing of each hearing instrument provided;

(E) - (F) (No change.)

(2) (No change.)

(f) Audiometers and audiometric testing devices.

(1) Audiometers and audiometric testing devices shall meet the current standards of the American National Standards Institute or the International Electrotechnical Commission (IEC). [~~or as otherwise specified by the Texas Department of Health (department).~~]

(2) All portable and stationary testing equipment used by the license holder must be calibrated annually and proof of certification must be provided upon renewal of license, if the licensee is selected for audit.

[~~(2) Current audiometer or audiometric testing device calibration records shall be maintained with each audiometer or audiometric testing device. Audiometer or audiometric testing device calibration records and data shall be maintained for inspection by the department for a period of three years.~~]

(g) Audiometric testing not conducted in a stationary acoustical enclosure.

(1) (No change.)

(2) Ambient noise level of the location of the audiometric testing, if not done in a stationary acoustical enclosure, shall include a notation on the hearing test of the following items:

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

(3) (No change.)

(h) (No change.)

§141.17. Complaints and Violations.

(a) Disciplinary action; notices.

(1) (No change.)

(2) Prior to initiation of formal proceeding to refuse to issue or renew a license, revoke or suspend a license or permit, probate disciplinary action, assess an administrative penalty, or issue a reprimand to a permit holder or licensee, the committee or its designee shall give written notice to the licensee, permit holder, or applicant by certified mail, return receipt requested, of the facts or conduct alleged to warrant the action, including the complainant's name if appropriate; and the licensee, permit holder, or applicant shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter, as required by Texas Government Code [~~Civil Statutes~~], §2001.054(c)(2).

(3) If disciplinary action against a licensee or permit holder or denial of a license or permit application or renewal application [~~suspension of a license or permit of an applicant~~] is proposed, the committee or its designee shall give written notice by certified mail, return receipt requested, of the basis for the proposal and that the licensee, permit holder, or applicant must request, in writing, a formal hearing within ten days of receipt of the notice, or the right to a hearing shall be waived and the proposed action shall be taken [~~committee may refuse to issue or renew a license, revoke or suspend a license or permit; probate disciplinary action, or reprimand a licensee or permit holder~~].

(4) (No change.)

(b) Reporting alleged violations.

(1) (No change.)

(2) Upon receipt of a complaint, the executive director shall send an acknowledgment letter to the complainant with an official form which the complainant shall be asked to complete and return the form to the committee [~~before further action can be taken~~]. The executive director may accept an anonymous complaint if there is sufficient information for investigation. The Executive Director may accept a complaint that is not on the official form.

(3) (No change.)

(4) The executive director shall request a specific [~~notarized~~] response from the licensee or permit holder against whom the alleged violation has been filed and gather information required by the complaints subcommittee.

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

(7) The committee, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

[~~(7) At each 90-day interval, following the receipt of the complaint until the complaint is finally resolved or closed, the committee shall notify a complainant of the status of his or her complaint unless the notice would jeopardize an undercover investigation.~~]

(8) The committee shall address all complaints in a timely manner. [~~After review of each complaint, the executive director shall establish a schedule for conducting each phase of the complaint procedure not later than the 30th day after the date the complaint is received. The schedule shall be kept in the information file for the complaint. A change in the schedule must be noted in the complaint information file.~~]

(9) The executive director shall notify the complaints subcommittee of a complaint that has not been resolved in a timely manner. [~~if a change extends the time prescribed for resolving the complaint.~~]

(c) - (e) (No change.)

(f) Monitoring of licensees.

(1) The department [~~executive director~~] shall maintain a complaint tracking system.

(2) - (4) (No change.)

(g) When a licensee or permit holder has offered the surrender of his or her license or permit after a complaint has been filed, the committee shall consider whether to accept the surrender of the license or permit. When the committee has accepted such a surrender, the surrender is deemed to be the result of a formal disciplinary action and a committee order accepting the surrender may be prepared.

§141.18. Formal Hearings.

(a) Formal hearings will be conducted pursuant to the APA and will be held by the State Office of Administrative Hearings.

[~~(a) Purpose. This section covers the formal hearing procedures and practices that will be used by the committee in handling suspensions, revocation of license, denial of licenses, probating a license~~

~~suspension, and reprimanding a licensee. Such hearing will be conducted pursuant to the contested case provisions of the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001 and will be held by the State Office of Administrative Hearings.]~~

(b) - (j) (No change.)

§141.19. Administrative Penalties.

(a) The committee may assess an administrative penalty in accordance with the Act.

~~[(a) The assessment of an administrative penalty is governed by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, Texas Occupations Code Act (Act), §402.511.]~~

(b) The complaints subcommittee, with the approval of the committee [~~and the Texas Board of Health (board)~~] may impose a fine not to exceed $250 plus costs for the first violation and not to exceed $1,000 plus costs for each subsequent violation of the Act, and the rules adopted under the Act, on any person or entity described in the Act. The fine may be invoked as an alternative to any other disciplinary measure, except for probation, as set forth by the committee.

(c) (No change.)

§141.20. Informal Disposition.

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

(d) The executive director shall decide upon the time, date and place of the settlement conference, and provide written notice to the licensee or applicant of the same. Notice shall be provided no less than 10 days prior to the date of the conference [~~by certified mail, return receipt requested,~~] to the last known address of the licensee or applicant or by personal delivery. The 10 days shall begin on the date of mailing or personal delivery. The licensee or applicant may waive the 10-day [~~10 day~~] notice requirement.

(e) A copy of the committee's rules concerning informal disposition may [~~shall~~] be enclosed with the notice of the settlement conference. The notice shall inform the licensee or applicant of the following:

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

(f) The notice of the settlement conference may [~~shall~~] be sent [~~by certified mail, return receipt requested,~~] to the complainant at his or her last known address or personally delivered to the complainant. The complainant may [~~shall~~] be informed that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. [~~The complainant shall be notified if the conference is canceled.~~]

(g) One member of the complaints subcommittee shall [~~may~~] be present at a settlement conference.

(h) (No change.)

(i) The licensee or applicant, the licensee's or applicant's attorney, the complaints subcommittee [~~Complaints Committee~~] members, the committee's legal counsel, and the executive director, may question witnesses, make relevant statements, present statements of persons not in attendance and present such other evidence as may be appropriate.

(j) - (k) (No change.)

(l) Access to the committee's investigative file may be prohibited or limited in accordance with the Public Information Act [~~(Open Records Act)~~], Government Code, Chapter 552, and the Administrative Procedure Act (APA), Government Code, Chapter 2001.

(m) (No change.)

(n) The complainant shall not be considered a party in the settlement conference but may [~~shall~~] be given the opportunity to be heard [~~if the complainant attends~~]. Any written statement submitted by the complainant shall be reviewed at the conference.

(o) At the conclusion of the settlement conference, the subcommittee member or executive director may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act. [~~State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments Act (Act).~~] The committee member may also conclude that the committee lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

(p) The licensee or applicant may either accept or reject the settlement recommendations at the conference. If the recommendations are accepted, an agreed settlement order shall be prepared by the committee staff [~~office~~] or the committee's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the committee staff [~~office~~] within ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(q) - (w) (No change.)

§141.21. Suspension of License Relating [~~for Failure~~] to [~~Pay~~] Child Support and Child Custody Orders.

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

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the standard renewal procedures in the [~~State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments~~] Act [~~, Texas Occupations Code, §402.301, and §141.13 of~~] and this title [~~(relating to Renewal of License)~~]. However, the license will not be renewed until the requirements of subsections (g) and (h) of this section are met.

(f) - (h) (No change.)

§141.22. Code of Ethics.

(a) The purpose of this section is to establish the standards of professional and ethical conduct required of a licensee or permit holder [~~under the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments Act (Act), Texas Occupations Code, Chapter 402,~~] and constitutes a code of ethics as authorized by the Act. It is the responsibility of all licensees and permit holders [~~dispensers, fitters, and apprentice licensees covered under the Act~~] to uphold the highest standards of integrity and ethical principles.

(b) A licensee of hearing instruments must observe and comply with the code of ethics and standards of practice set forth in this chapter. Any violation of the code of ethics or standards of practice will constitute unethical conduct or conduct that discredits the profession of the dispensing and fitting of hearing instruments and is grounds for disciplinary action.

(1) - (4) (No change.)

(5) A licensee shall not engage in sexual contact or sexual exploitation with a client. Sexual contact means the behaviors and activities described in the Texas Penal Code, §21.01 (relating to Sexual Offenses; Definitions). Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal, sexual gratification, or sexual abuse.

[(5) A licensee shall not engage in any explorative or sexual act with a client.]

(6) (No change.)

(7) A licensee shall refer a client for those services that they are unable to provide [meet].

(8) A licensee shall comply with the requirements of the Health Insurance Accountability and Portability Act of 1996 (HIPAA).

§141.23. Relevant Factors.
When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which include: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the complaints [complaint] subcommittee or administrative law judge. Specific factors are to be considered as set forth herein.

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

§141.24. Severity Level and Sanction Guide.
The following severity levels and guide for sanctions [sanction guides] are based on the relevant factors in §141.23 of this title (relating to Relevant Factors).

(1) - (5) (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 January 2, 2006.

TRD-200600006
Ronald Ensweiler
Chair
State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 458-7236

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PART 31. TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

CHAPTER 711. DIETITIANS

22 TAC §§711.1 - 711.3, 711.6 - 711.8, 711.12, 711.14, 711.17, 711.19

The Texas State Board of Examiners of Dietitians (board) proposes amendments to §§711.1 - 711.3, 711.6 - 711.8, 711.12, 711.14, 711.17, and 711.19, concerning the licensure and regulation of dietitians.

The amendments are proposed pursuant to statutory changes to the Texas Occupations Code, Chapter 701, regarding House Bill 1155, passed during the 79th Legislature, 2005. Each section was reviewed and proposed for amendment in order to ensure clarity; to ensure that the rules reflect current legal, policy, and operational considerations; to ensure accuracy; to improve draftsmanship; and to make the rules more accessible, understandable, and usable, to the extent possible.

SECTION BY SECTION SUMMARY

The amendment to §711.1 is amended to reflect the current name of the agency.

The amendment to §711.2 is amended to clarify travel reimbursement for board members and the process for the election of presiding officers of the board.

Amendments to §711.3 add new language that allows hospital dietitians to take/transcribe dietary and parental nutrition orders under the provision of protocols approved by the governing bodies of these institutions.

The amendment to §711.6(g)(3) specifies the examination is the "licensing" examination.

The amendment to §711.6(h) is being deleted because the subsection is a duplicate rule to 711.6(b).

The amendment to §711.7 is proposed to add new language to require the Texas Jurisprudence Exam.

The amendment to §711.8 is proposed to add language regarding failure to show proof of the Texas Jurisprudence exam will be reason for disapproval of a license. Also, procedures for processing applications will increase from 14 working days to 20 working days.

Regarding §711.12(7), new language is added to allow refusal to renew for non-payment of an administrative penalty imposed under the Act.

Amendments to §711.14 are proposed to clarify the maximum amount an administrative penalty may be per violation, per day and the ability to issue a cease and desist order.

Amendments to §711.17 add new language to require the Texas Jurisprudence Exam for licensure renewal.

New language was added to §711.19 to allow the board to order a license holder to issue a refund to a consumer resulting from an informal conference instead of or in addition to an administrative penalty.

FISCAL NOTE

Bobbe Alexander, Executive Secretary, has determined that for each fiscal year of the first five years the sections are in effect, there will be no fiscal implications to the state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

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

PUBLIC BENEFIT

Ms. Alexander has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to effectively regulate the practice of dietetics in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225.

"Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed amendments do 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Bobbe Alexander, Executive Secretary, State Board of Examiners of Dietitians, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 or by email to dietitian@dshs.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the e-mail subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §701.152, which authorizes the board to adopt rules necessary for the performance of the board's duties.

The proposed amendments affect Occupations Code, Chapter 701.

§711.1. Definitions.

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

(1) - (10) (No change.)

(11) Department--Department of State Health Services. [~~The Texas Department of Health or its successor organization.~~]

(12) - (25) (No change.)

§711.2. The Board's Operation.

(a) - (g) (No change.)

(h) Reimbursement for expense.

[~~(1) A board member is entitled to a per diem payment at the rate set by the legislature for state employees in the latest General Appropriations Act passed by the Texas Legislature.~~]

(1) [~~(2)~~] A board member is entitled to compensation for travel [~~transportation~~] expenses as provided by the latest General Appropriations Act passed by the Texas Legislature.

(2) [~~(3)~~] Payment to board members of travel [~~per diem and transportation~~] expenses shall be requested on official state travel vouchers which have been approved by the executive secretary.

(3) [~~(4)~~] Board travel must conform to existing policies of the department.

(4) [~~(5)~~] Attendance at conventions, meetings, and seminars must be clearly related to the performance of board duties and show a benefit to the state.

(i) - (l) (No change.)

(m) Elections.

(1) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

[~~(1) At the meeting held after August 31 of each odd-numbered year, the board shall elect by a majority vote of those members present and voting, a chair and a vice-chair. When the Governor appoints new board members to replace those currently serving as chair or vice chair, an election will be held not later than the 30th day after the date the governor makes the appointment in accordance with the Act, §701.057.~~]

(2) The board shall meet to elect an assistant presiding officer in accordance with the Act.

[~~(2) A vacancy which occurs in the offices of chair and vice-chair shall be filled, for the duration of the unexpired term, by a majority vote of those members present and voting at the next board meeting.~~]

(3) (No change.)

(4) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with the Act.

(n) Committees.

(1) - (6) (No change.)

(7) The following standing committees shall be appointed by the newly elected chair each odd-numbered year to serve a term of two years.

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

(D) The board shall appoint at least one public member to any board committee established to review a complaint filed with the board or review an enforcement action against a license holder related to a complaint filed with the board. [~~The complaint committee shall be composed of a person(s) appointed by the chair.~~] The committee may review complaints received by the board and shall recommend action to be taken on complaints in accordance with §711.14 of this title (relating to Violations, Complaints, and Subsequent Board Actions).

(o) (No change.)

(p) Registry.

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

(3) The registry will be available on the board's Internet web site [~~at www.tdh.state.tx.us/hcqs/plc/diet.htm~~].

(q) - (s) (No change.)

§711.3. The Profession of Dietetics.

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

(c) Provider of nutrition services.

(1) A person licensed by the board is designated as a health care provider of nutrition services.

(2) A licensed dietitian, acting within the scope of his or her license and consistent with medical direction or authorization as provided in this section, may accept, transcribe into a patient's medical record or transmit verbal or electronically-transmitted orders, including medication orders, from a physician to other authorized health care professionals relating to the implementation or provision of medical nutrition therapy and related medical protocols for an individual

patent or group of patients. In a licensed health facility, the medical direction or authorization shall be provided, as appropriate, through a physician's order, or a standing medical order, or standing delegation order, or medical protocol issued in accordance with Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Board of Medical Examiners implementing the subchapter. In a private practice setting, the medical direction or authorization shall be provided, as appropriate, through the physician's order, standing medical order, or standing delegation order of a referring physician, in accordance with Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Board of Medical Examiners implementing the subchapter.

(3) A licensed dietitian, acting within the scope of his or her license and consistent with medical direction or authorization as provided in this section, may order medical laboratory tests relating to the implementation or provision of medical nutrition therapy and related medical protocols for individual patients or groups of patients. In a licensed health facility, the medical direction or authorization shall be provided, as appropriate, through a physician's order, or a standing medical order, or standing delegation order, or medical protocol, issued in accordance with Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Board of Medical Examiners implementing the subchapter. In a private practice setting, the medical direction or authorization shall be provided through the physician's order, standing medical order, or a standing delegation order of the referring physician, in accordance with Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Board of Medical Examiners implementing the subchapter.

(d) - (g) (No change.)

§711.6. Examinations for Dietitian Licensure.

(a) - (f) (No change.)

(g) Failures.

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

(3) An applicant who fails the licensing examination three times shall have his/her application denied unless the applicant furnished the board an official transcript from an accredited college or university indicating completed course work taken for credit with a passing grade in the area(s) of weakness determined by analysis of the previous examination(s). Before the applicant will be scheduled for another examination, the applicant shall submit an official transcript showing course work completed in the area of weakness after the date of the last examination taken by the applicant.

(4) (No change.)

~~[(h) Registered dietitians. The board shall waive the licensing examination requirement for applicants who are registered in active status by the commission at the time of making application to the board.]~~

§711.7. Application Procedures for All Licensees.

(a) (No change.)

(b) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official board forms.

(2) Proof of successfully completing the Texas Jurisprudence Exam must be submitted with the application.

(3) [~~(2)~~] The board will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form. See fee schedule in §711.2(u) of this title (relating to the Board's Operation).

(4) [~~(3)~~] The board must receive all required application materials at least 60 days prior to the date the applicant wishes to take the examination.

(5) [~~(4)~~] The executive secretary will send a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed within 30 days after the date of the board's notice may be voided.

(c) Required application materials.

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

~~[(4) An applicant shall have two professional references (included in the application packet) submitted by licensed dietitians or registered dietitians who can attest to the applicant's dietetic skills and professional standards of practice. The references shall be persons who are not named elsewhere in the applicant's application and who are not current members of the board.]~~

(4) [~~(5)~~] If an applicant is or has been licensed, certified, or registered in another state, territory, or jurisdiction, the applicant must submit information required by the board concerning that license, certificate, or registration on official board forms.

(5) [~~(6)~~] Vitae, resumes, and other documentation of the applicant's credentials may be submitted.

(6) [~~(7)~~] A provisional licensed dietitian applicant must submit a completed supervision contract.

§711.8. Determination of Eligibility for Licensure.

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

(e) The board may disapprove the application if the person has:

(1) - (7) (No change.)

(8) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee as set out in §711.13 of this title (relating to Licensing of Persons with Criminal Backgrounds To Be Dietitians and Provisional Licensed Dietitians); [~~or~~]

(9) had a license, registration, or certificate to practice dietetics in another state or jurisdiction which has been suspended, revoked, or otherwise restricted by the licensing entity or commission; or [~~.~~]

(10) failed to submit proof of successfully completing the Texas Jurisprudence exam as required in §711.7(b) of this title (relating to Application Procedures for All Licensees), or §711.17(i) of this title (relating to Continuing Education Requirement).

(f) - (g) (No change.)

(h) Processing procedures are as follows.

(1) Time periods. The board shall comply with the following procedures in processing applications for licensure and renewal.

(A) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(i) letter of acceptance of application for licensure--20 [~~14~~] working days;

(ii) letter of application deficiency--20 [~~14~~] working days; and

(iii) (No change.)

(B) (No change.)

(2) - (4) (No change.)

§711.12. License Renewal.

(a) General.

(1) - (6) (No change.)

(7) The board may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(b) - (e) (No change.)

§711.14. Violations, Complaints, and Subsequent Board Actions.

(a) (No change.)

(b) Filing of complaints.

(1) Anyone may allege to the board that a person has committed an action prohibited under the Act or that a licensee has violated the Act or a board rule.

(2) A person wishing to complain about a prohibited act or alleged violation shall notify the board office. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the executive secretary's office. [~~The mailing address is Texas State Board of Examiners of Dietitians, 1100 West 49th Street, Austin, Texas 78756-3183, 1-800-942-5540 or the web site at www.tdh.state.tx.us/hcqs/plc/diet.htm~~].

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

(c) - (e) (No change.)

(f) In determining the seriousness of the violation under subsection (e)(1) of this subsection, the board will use the following guidelines.

(1) Severity Level I violations are those that had or may have a serious adverse impact on the health and safety of a patient or client. If an administrative penalty is assessed for a Level I violation, the maximum amount of the penalty shall be $5,000 per violation per day. [~~The maximum penalty is $5,000 per violation per day.~~]

(2) Severity Level II violations are those that had or may have a significant adverse impact on the health or safety of a patient or client. If an administrative penalty is assessed for a Level II violation, the maximum amount of the penalty shall be $2,500 per violation per day. [~~The maximum fine is $2500 per violation per day.~~]

(3) Severity Level III violations are those that had or may have a minor impact on health or safety of a patient or client. If an administrative penalty is assessed for a Level III violation, the maximum amount of the penalty shall be $1,250 per violation per day. [~~The maximum fine is $1250 per violation per day and the minimum fine is $50.~~]

(g) - (k) (No change.)

(l) Cease and Desist Order. If it appears to the board that a person who is not licensed under the Act is violating the Act, a rule adopted under the Act, or another state statute or rule relating to the practice of dietetics, the board, after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity. A violation of an order under this subsection constitutes grounds for the imposition of an administrative penalty by the board.

§711.17. Continuing Education Requirements.

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

(i) The Texas Jurisprudence Exam shall be required as follows.

(1) Effective September 1, 2006, all renewal applicants must successfully complete at the time of renewal, the Texas Jurisprudence Exam, once every four years.

(2) Proof of successfully completing the exam must be retained by the licensee as required in subsection (c) of this section.

(3) One hour of Continuing education credit will be granted for successful completion of the Texas Jurisprudence Exam during a four-year period.

(j) [~~(i)~~] Any licensee attaining the age of 60 years who is not in the active practice of dietetics shall have the continuing education requirements waived upon the licensee's request.

§711.19. Informal Disposition.

(a) - (w) (No change.)

(x) Refund order.

(1) The dietitians board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(2) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

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

Filed with the Office of the Secretary of State on December 30, 2005.

TRD-200506174
Ralph McGahagin
Chair
Texas State Board of Examiners of Dietitians
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 458-7236

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PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

The Council on Sex Offender Treatment (Council) proposes the repeal of §§810.1 - 810.5, 810.7 - 810.9; 810.31 - 810.34, 810.61 - 810.67, 810.91, 810.92, 810.122, 810.151 - 810.153, 810.182, 810.183, 810.211, 810.241, 810.242, 810.271, and 810.272; and new §§810.1 - 810.5, 810.7 - 810.9; 810.31 - 810.34, 810.61 - 810.67, 810.91, 810.92, 810.122, 810.151 - 810.153, 810.182, 810.183, 810.211, 810.241, 810.242, 810.271, and 810.272, concerning the licensing of sex offender treatment providers and the civil commitment of sexually violent predators.

BACKGROUND AND PURPOSE

The new sections are due to the statutory changes made during the 79th Texas Legislative Session, 2005, by the passage of House Bill (HB) 2036, codified in Occupations Code, Chapter 110. House Bill 2036 creates a protected practice of sex offender treatment providers which mandates that all such providers be licensed by the Council on Sex Offender Treatment. The legislation requires that the Council by rule set licensure requirements and standards for those individuals who provider sex offender treatment in this state. House Bill 2036 also provides the Council with additional enforcement tools, as well as, directs the Council to conduct a pilot program involving dynamic risk assessment and to report its finding to the Governor.

SECTION BY SECTION SUMMARY

New §§810.1 - 810.5, 810.7 - 810.9; 810.31 - 810.34, 810.61 - 810.67, 810.91 - 810.92, 810.122, 810.151 - 810.153, 810.182 - 810.183, 810.211, 810.241 - 810.242, and 810.271 - 810.272 provides clarification to the rules and statutory changes. New §810.1 provides for clarification of the original purpose and mission of the Council. New §810.2 adds new definitions and clarify other definitions. New §810.3 adds two new licensing tiers and deletes duplicate information. New §810.4 provides clarification to continuing education hours and adds ethics hours for renewals. New §810.5 provides a licensing fee in accordance with the tiered structure. New §810.7 provides clarification regarding letters of reference from experienced professionals. New §810.8 provides the criteria the council will use in evaluating criminal convictions for licensing purposes. New §810.9 provides clarification regarding the timeframe in processing a complaint. New §810.31 provides that the Council shall obtain a criminal history record as part of the application process. New §810.32 relates to records held by the Council and changes the term registrant to licensee. New §810.33 provides for the destruction of adjudication information by the Council and changes the term registrant to licensee. New §810.34 clarifies the frequency of performing a criminal background checks by the Council. New §810.61 provides that the Council shall maintain a database containing the names of licensed sex offender treatment providers. New §810.62, provides clarification of the professional and legal obligations required by licensees. New §810.63 provides clarification of the professional and legal obligations required by licensee in the assessment of a sex offender or juvenile with sexual behavior problems. New §810.64 provides clarification of the professional and legal obligations required by licensee in the assessment of juveniles with sexual behavior problems. New §810.65 provides clarification of the professional and legal obligations required by licensee regarding female sex offenders. New §810.66 provides clarification of the professional and legal obligations required by licensee regarding the assessment and treatment of developmentally delayed clients. New §810.67 shall subscribe and adhere to various tenets as the relate to pertinent issues to be addressed in treatment settings. New §891.91 provides licensees with general guidance regarding their ethical obligations. New §810.92 provides enforcement of the ethical obligations of all licensees. New §810.122 provides for various definitional changes involving the civil commitment program. New §810.151 provides the Council with authority to employ program specialists to assist in the civil commitment program. New §810.152 provides that a program specialist may be a recipient of information from the council relating to a sexually violent predator (SVP). New §810.153 provides for a clarification of where an SVP may be housed while in the civil commitment program, tracking services, follow up polygraph examinations, and supervision of SVPs. New §810.182 provides that a program specialist may perform duties relating to the outpatient treatment and supervision program. New §810.183 relates to the services provided by treatment providers and changes the term evaluations to assessments. New §810.211provides that a program specialist shall provide a report regarding the SVP's compliance. New §810.241-810.242 provides for the program specialist to authorize release and provide written notice to the SVP. New §810.271 clarifies that the council shall provide all relevant information to the program specialist. New §810.272 provides that duties and responsibilities of the Council under the Civil Commitment Act are suspended upon a person's confinement or commitment to a community center, mental health facility, or state school, by governmental action.

FISCAL NOTE

Allison Taylor, Executive Director, Council on Sex Offender Treatment, has determined that for each calendar year of the first five years the sections will be in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections proposed. The effect on state government will be an increase in revenue to the state of $26,100 the first calendar year as a result of collecting initial licensure fees set at $300. It is estimated that the small licensee population will increase by approximately 25% (approximately 87 license holders). There will be an increase in revenue of $17,400 during the third and fifth calendar year as the 87 additional license holders will renew licensure set at $200 every two years. This increase in revenue is an estimate as there is no statistical data on the number of persons providing sex offender treatment in Texas who are not currently listed on the Council's registry.

Implementation of the proposed sections may result in fiscal implementations for local and state governments. There may be fiscal implications for local and state governmental entities who currently utilize persons who are not previously registered. Those persons must now meet licensure requirements authorized through HB 2036 unless the specified entity exempts its provider from a specific licensing requirement. It is not possible to estimate how many providers employed through local or state governmental entities are affected or if the entity will choose to pay the licensing costs for the person. An affected person must meet the current licensure requirements (including possible additional education), pay a $300 initial licensure fee, meet continuing education requirements, and pay a $200 biennial renewal fee.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Taylor has also determined that there may be an effect on small businesses or micro-businesses to required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses may be required to alter their business practices in order to comply with the sections. There is no anticipated negative impact on local employment. There are anticipated economic costs to individuals who are required to comply with the sections as proposed. The initial application cost to an individual is $300 for the biennium plus a $39 for the Department of Public Safety criminal history check and thereafter a $200 biennial licensing renewal cost.

PUBLIC BENEFIT

In addition, Ms. Taylor has also determined that for each year of the first-five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to ensure and enhance public safety.

PUBLIC COMMENT

Comments on the proposal may be submitted to Lupe Ruedas, Council on Sex Offender Treatment, 1100 West 49th Street, Austin, Texas 78756, fax 512-834-4511, or email to lupe.Ruedas@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register*. For additional information, please contact Lupe Ruedas at 512-834-4530.

SUBCHAPTER A. SEX OFFENDER TREATMENT PROVIDER REGISTRY

22 TAC §§810.1 - 810.5, 810.7 - 810.9

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

§810.1. Introduction.

§810.2. Definitions.

§810.3. Registry Criteria.

§810.4. Registry Renewal.

§810.5. Fees.

§810.7. Documentation of Experience and Training.

§810.8. Revocation, Denial or Non-Renewal of Registration.

§810.9. Complaints, Disciplinary Actions, Administrative Hearings and Judicial Review.

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

Filed with the Office of the Secretary of State on December 30, 2005.

TRD-200506152
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 458-7236

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SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §§810.1 - 810.5, 810.7 - 810.9

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.1. Introduction.

(a) Purpose. The provisions of this chapter govern the procedures relating to the licensing of individuals as sex offender treatment providers in the State of Texas.

(b) Construction. These sections cover definitions, licensing criteria for application, fees, continuing education, complaints and other general procedures, and policies of the Council on Sex Offender Treatment.

(c) History. The Council on Sex Offender Treatment (council) was created by the 68th Legislature (Senate Bill 84) in 1983 under the name of the Interagency Council on Sex Offender Treatment and is codified in Occupations Code, Chapter 110. The council was designed to coordinate effective assessment and treatment strategies to reduce recidivism of sex offenders and to enhance public safety.

§810.2. Definitions.

(a) General Definitions.

(1) ATSA--Association for the Treatment of Sexual Abusers.

(2) Act--Texas Occupations Code, Chapter 110, relating to the Council on Sex Offender Treatment.

(3) Biennium--Every two years.

(4) Case Management--The coordination and implementation of activities directed toward supervising, treating, and managing the adult sex offender or juvenile with sexual behavioral problems.

(5) Client(s)--Used interchangeably with adult sex offenders and juveniles with sexual behavior problems.

(6) Council--Means the Council on Sex Offender Treatment. The council consists of 7 members, appointed by the Governor with the advice and consent of the Senate.

(7) Custodian--The adult who is responsible for the adult or child.

(8) Fiscal year--September 1 through August 31.

(9) Guardian--The person who, under court order, is the guardian of the person of the adult or the child or the public or private agency with whom the adult or juvenile has been placed by a court.

(10) HIPAA--Health Insurance Portability and Accountability Act, Title 45, Code of Federal Regulations (CFR), Parts 160 and 164.

(11) Juvenile Court--A court designated under the Family Code, Title 3, Juvenile Justice Code, §51.04, to exercise jurisdiction over the proceedings.

(12) Licensed Practitioner--A licensed practitioner defined in Health and Safety Code, §1.005 as a sex offender treatment provider who is licensed under Chapter 110, Occupations Code.

(13) Licensed Sex Offender Treatment Provider--A treatment provider licensed by the council and who is recognized based on

training and experience to provide assessment and treatment to adult sex offenders and/or juveniles with sexual behavioral problems.

(14) Licensee--A person who is licensed by the Council to assess and treat adult sex offenders and/or juveniles with sexual behavior problems.

(15) Mental Health or Medical License--A license or certification to practice as a physician, psychiatrist, psychologist, psychological associate, licensed professional counselor, licensed marriage and family therapist, licensed clinical social worker, licensed master social worker, advanced nurse practitioner, licensed marriage and family therapist associate, licensed professional counselor intern, provisionally licensed psychologist, recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, who provides mental health or medical services for the treatment of sex offenders.

(16) Reportable Conviction or Adjudication--A conviction or adjudication, regardless of the pendency of an appeal.

(b) Treatment Definitions.

(1) Ability to give consent--Consent is an expressed agreement. Consent cannot be given by someone who is not of the legal age, is emotionally or cognitively disabled, or under the influence of drugs or alcohol. The legal age to give consent for sexual contact in the State of Texas is 17 years old.

(2) Accountability--Accurate attributions of responsibility, without distortion, minimization, or denial.

(3) Adaptive behavior--The effectiveness with which a person meets the standards of personal independence and social responsibility reasonably expected of the person's age and cultural group (Health and Safety Code, Chapter 614).

(4) Anti-androgens--Medication used to reduce the endogenous levels of testosterone with the possible result of reducing sexual arousal and assisting in controlling deviant sexual arousal.

(5) Appropriate sexual behavior--A sexual act that meets the following criteria:

(A) is with a person over the legal age of consent for sexual contact (17 years of age);

(B) is with a person able to give consent;

(C) is not forced;

(D) does not cause physical harm, or is coerced;

(E) does not use intimidation or deceit,

(F) is not paid for; and

(G) is not harmful or degrading.

(6) Aversive conditioning--Behavioral techniques that involve pairing deviant sexual arousal with a noxious stimulus in order to reduce deviant sexual arousal.

(7) Clarification--The process designed for the primary benefit of the victim, by which the adult sex offender or juvenile with sexual behavior problems clarifies that the responsibility for the assault/abuse resides with the adult offender or juvenile. The victim has no responsibility for the adult offender or juvenile's behavior. It addresses the harm done to the victim and the family. The victim's participation is never required and is sometimes contraindicated. All contact is victim centered and based on the victim's need.

(8) Containment approach--A method of case management and treatment that seeks to hold adult sex offenders and juveniles with sexual behavioral problems accountable through the combined use of both internal and external control measures. A containment approach requires the integration of a collection of attitudes, expectations, laws, policies, procedures, and practices.

(9) Denial--Refusal to acknowledge in whole or part sexually deviant arousal, sexually deviant intent, and/or sexually deviant behavior.

(10) Deviant sexual arousal--A pattern of physiological sexual responses to inappropriate fantasies, thoughts, objects, and/or persons that may or may not precede a sexual act. Deviant sexual arousal is the most obvious manifestation of deviant sexual interests.

(11) Deviant sexual behavior--A sexual act that meets one or more of the subsequent criteria:

(A) is with a person under the legal age of consent for sexual contact (17 years of age);

(B) is with a person who is unable to give consent;

(C) is forced, causes physical harm, is coerced, uses intimidation or deceit, or is paid for; or

(D) is harmful or degrading.

(12) Developmental disability--A severe and chronic disability that is attributable to a mental or physical impairment or a combination of physical and mental impairments, is manifested before age 22, is likely to continue indefinitely, and results in substantial functional limitations in three or more of the major life activities (Health and Safety Code, Chapter 614).

(13) Dynamic risk factors--Risk factors that can change over time and are therefore important targets for treatment and supervision. Dynamic risk factors include but are not limited to associations with antisocial peers, deviant sexual fantasies, and substance use.

(14) Empathy--The ability to identify and understand another person's feelings, situation, or ideas.

(15) Grooming--The process of desensitizing and manipulating the victim(s) and/or others for the purpose of gaining an opportunity to commit a sexually deviant act.

(16) Inappropriate sexual behavior--Any sexual behavior outside the norm for the age and development for that individual.

(17) Juvenile with sexual behavior problems--A person who is ten years of age or older and under 17 years of age who commits any sexual interaction with a person of any age against the victim's will, without knowing consent, or in an aggressive, exploitative, or threatening manner (Juvenile Justice Code Title 3, §51.02).

(18) Mental illness--An illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that substantially impairs a person's thoughts, perception of reality, emotional process, or judgment or grossly impairs behavior as demonstrated by recent disturbed behavior (Health and Safety Code, Chapter 571).

(19) Mental retardation--A significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period (Health and Safety Code, §591.003).

(20) Offense cycle--The specific sequence(s) of thoughts, feelings, behaviors, and events that precede a sexual offense. The offense cycle is thought to be a precursor to sexual offending and should be addressed in relapse prevention.

(21) Offense specific--Consistent with current professional practices, and means a long-term comprehensive set of planned treatment experiences and interventions to modify sexually deviant

thoughts and behaviors. Such treatment specifically addresses the occurrence and dynamics of sexually deviant thoughts and behaviors and utilizes specific strategies to promote change and reduce the chance of re-offending. Sex offense specific programming focuses on concrete details of the actual sexual behavior, the fantasies, the arousal, the planning, the denial, and the rationalizations. The primary treatment modality is cognitive behavioral group treatment.

(22) Penile plethysmograph--A diagnostic method to assess sexual arousal by measuring the blood flow (tumescence) to the penis during the presentation of sexual stimuli in a laboratory setting.

(23) Polygraph (clinical) examination--The employment of any instrumentation complying with the required minimum standards of the Texas Polygraph Examiner's Act and used for the purpose of measuring the physiological changes associated with deception. Four types of polygraphs used in the management of adult sex offenders and juveniles with sexual behavior problems are the instant sexual offense polygraph, sexual history polygraph, maintenance polygraph, and the monitoring polygraph.

(24) Polygraph examiner--A licensed person who adheres to the standards set forth by the Joint Polygraph Committee on Offender Testing (JPCOT).

(25) Rehabilitation service--A mental health treatment or medical intervention program designed to treat or remedy a client's mental or medical problem that may relate or contribute to the client's criminal or paraphilic problem.

(26) Sex offender--A person who:

(A) is convicted of committing or adjudicated to have committed a sex crime under the laws of a state or under federal law, including a conviction of a sex crime under the uniform code of military justice;

(B) is awarded deferred adjudication for a sex crime under the laws of a state or under federal law;

(C) admits to having violated the law of a state or federal law with regard to sexual conduct; or

(D) experiences or evidences a paraphiliac disorder as defined by the current version of the Diagnostic and Statistical Manual (DSM), as published by the American Psychiatric Association Press, including any subsequent revision of the manual, which may place a person at risk for the violation of sex offender laws.

(27) Sex offender treatment--Means offense specific cognitive/behavior treatment which may include a medical intervention program designed to treat a client's deviant cognitive thoughts process and/or sexual behavior that relate or contribute to the client's criminal sexual behavior.

(28) Static risk factors--Risk factors that are unlikely to change over time such as number of prior offenses, diagnosis of psychopathy or diagnosis of paraphilia.

(29) Sub-average general intellectual functioning--Refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used (Health and Safety Code, §591.003).

(30) Successful completion of treatment--Includes but is not limited to admitting and accepting responsibility for all crimes, demonstrating the ability to control deviant sexual arousal, understanding of current and instant offense cycle, increase in pro-social behaviors, increase in appropriate support systems, improved social competency, compliance with supervision, compliance with court conditions, increased understanding of victimization, no deception indicated on exit polygraphs, completing and passing the sex history polygraph, approved safety plans, approved relapse prevention plan, successful completion of adjunct treatments (for example: anger management, substance abuse, etc.), and the demonstrated integration and practical application of the skills presented in treatment. Each of these issues regarding successful completion of treatment shall be addressed unless precluded by §810.64 of this title (relating to Juveniles with Sexual Behavior Problems) or §810.66 of this title (relating to Developmentally Delayed Clients). The Licensed Sex Offender Treatment Provider after collaborating with appropriate criminal/juvenile justice personnel determines successful completion of treatment.

(31) Visual reaction time--Means the measurement of sexual interest. The measurement is based on the relative amount of time spent looking at visual stimuli.

§810.3. Licensed Required.

A person may not provide a rehabilitation service or act as a sex offender treatment provider unless the person is licensed by the council. A person may not claim to be a sex offender treatment provider or use the title or an abbreviation that implies the person is a sex offender treatment provider unless the person is licensed under this chapter. The council shall maintain a list of licensees who meets the council's criteria in the assessment and treatment of adult sex offenders and/or juveniles with sexual behavior problems. The council shall recognize the experience and training of treatment providers in the following categories: Licensed Sex Offender Treatment Provider", Affiliate Sex Offender Treatment Provider", "Provisional Sex Offender Treatment Provider", or "Institutional Sex Offender Treatment Provider".

(1) Licensed Sex Offender Treatment Provider (LSOTP). To be eligible as a LSOTP, the applicant shall meet all of the following criteria:

(A) licensed or certified to practice as a physician, psychiatrist, psychologist, licensed professional counselor, licensed marriage and family therapist, licensed clinical social worker, or advanced nurse practitioner recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, and who provides mental health or medical services for the treatment of sex offenders and/or juveniles with sexual behavior problems. The license status shall be current and active;

(B) experience and training required as listed in clauses (i)-(ii) of this subparagraph:

(i) possess a minimum of 1000 documented and verified hours of clinical experience in the areas of assessment and treatment of sex offenders, obtained within a consecutive seven-year period, and provide two reference letters from licensed sex offender treatment providers who have actual knowledge of the applicant's clinical work in sex offender assessment and treatment; and

(ii) possess a minimum of 40 hours of documented continuing education training, as defined in §810.7 of this title (relating to Documentation of Experience and Training), obtained within three years prior to the application date, in the specific area of sex offender assessment and treatment. Of the initial 40 hours training required, 30 hours shall be in sex offender specific training. Ten hours shall be in sexual assault survivor/victim related training;

(C) submit a complete and accurate description of their treatment program on a form provided by the council;

(D) persons making initial application or renewing their eligibility for licensure shall adhere to Subchapter C. Standards of Practice and Subchapter D. Code of Professional Ethics and shall comply with the following:

(i) not have been convicted and/or adjudicated of any felony, or of any misdemeanor involving a sex offense or sexually motivated offense, nor have received deferred adjudication for a sex offense, and/or required to register as a sex offender under Texas Code of Criminal Procedures, Chapter 62;

(ii) not have had licensure revoked or canceled by any professional licensing body:

(iii) shall comply with the following: submit themselves to a criminal history background check. An applicant shall be required to submit a complete set of fingerprints with the application documents, or other information necessary to conduct a criminal history background check to be submitted to the Texas Department of Public Safety or to another law enforcement agency. If fingerprints are requested, the fingerprints shall be taken by a peace officer or a person authorized by the council and shall be placed on a form prescribed by the Texas Department of Public Safety; and

(iv) not have violated any rule adopted by the council;

(E) submit an application fee as defined in §810.5 of this title (relating to Fees);

(F) submit a copy of his or her mental health or medical license, as set out in subparagraph (A) of this paragraph, indicating the applicant's license is current and in good standing;

(G) sign the application form(s) and attest to the accuracy of the application; and

(H) complete the process within 90 days of the application's receipt in the council office.

(2) Affiliate Sex Offender Treatment Provider (ASOTP). To be eligible as an ASOTP, the applicant shall meet all of the following criteria:

(A) licensed or certified to practice as a physician, psychiatrist, psychologist, psychological associate, provisionally licensed psychologist, licensed professional counselor, licensed professional counselor intern, licensed marriage and family therapist, licensed marriage and family associate, licensed masters clinical social worker seeking approved supervision towards the licensed clinical social worker, or advanced nurse practitioner recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, and who provides mental health or medical services for the treatment of sex offenders and/or juveniles with sexual behavior problems. The license status shall be current and active;

(B) experience and training required as listed in clauses (i) - (iii) of this subparagraph:

(i) possess a minimum of 250 documented and verified hours of clinical experience in the areas of assessment and treatment of sex offenders and or juveniles with sexual behavior problems, provide two reference letters from licensed sex offender treatment providers who have actual knowledge of the applicant's clinical work in sex offender assessment and treatment;

(ii) supervised by an LSOTP in accordance with paragraph (4)(C) of this subsection until LSOTP status is reached and submit a copy of the LSOTP supervisor's license, indicating the applicant is current and in good standing ; and

(iii) possess a minimum of 40 hours of documented continuing education training, as defined in §810.7 of this title, obtained within three years prior to application date, in the specific area of sex offender assessment and treatment. Of the initial 40 hours training required, 30 hours shall be in sex offender specific training. Ten hours shall be in sexual assault survivor/victim related training;

(C) complete and submit an accurate description of their treatment program on a form provided by the council;

(D) shall comply with paragraph (1)(D)(i-iv) of this section; and

(E) adhere to Subchapter C. Standards of Practice and Subchapter D. Code of Professional Ethics

(F) submit an application fee as defined in §810.5 of this title;

(G) submit a copy of his or her medical or mental health license or certification as set out in subparagraph (A) of this paragraph, indicating the applicant is current and in good standing;

(H) sign the application form(s) and attest to the accuracy of the application; and

(I) complete the process within ninety (90) days of the application's receipt in the council office.

(3) Provisional Sex Offender Treatment Provider (PSOTP). This license status is only valid for one two-year term from the date of receipt of the application to the Council. To be eligible as a PSOTP, the applicant shall meet all of the following criteria:

(A) licensed or certified to practice as a physician, psychologist, psychological associate, provisionally licensed psychologist, licensed professional counselor, licensed professional counselor intern, licensed marriage and family therapist, licensed marriage and family associate, licensed clinical social worker, licensed masters clinical social worker seeking approved supervision towards the licensed clinical social worker, or advanced nurse practitioner recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, and who provides mental health or medical services for the treatment of sex offenders and/or juveniles with sexual behavior problems. The license status shall be current and active;

(B) experience and training required as listed in clauses (i)-(ii) of this subparagraph:

(i) possess a minimum of 250 documented and verified hours of clinical experience in the areas of assessment and treatment of sex offenders, obtained within a consecutive seven-year period, and provide two reference letters from licensed sex offender treatment providers who have actual knowledge of the applicant's clinical work in sex offender assessment and treatment; and

(ii) possess a minimum of 40 hours of documented continuing education training, as defined in §810.7 of this title (relating to Documentation of Experience and Training), obtained within 24 months of the date of application, in the specific area of sex offender assessment and treatment. Of the initial 40 hours training required, 30 hours shall be in sex offender specific training. Ten hours shall be in sexual assault survivor/victim related training;

(C) submit a complete and accurate description of their treatment program on a form provided by the council;

(D) adhere to Subchapter C. Standards of Practice;

(E) adhere to Subchapter D. Code of Professional Ethics;

(F) shall comply with paragraph (1)(D)(i-iv) of this section;

(G) submit an application fee defined in § 810.5 of this title;

(H) submit a copy of his or her medical or mental health license or certification as set out in subparagraph (A) of this paragraph, indicating the applicant is current and in good standing;

(I) shall be supervised by an LSOTP as defined in paragraph (4)(A)-(D) of this subsection;

(J) submit a copy of the LSOTP supervisor's license, indicating the applicant is current and in good standing;

(K) sign the application form(s) and attest to the accuracy of the application in the presence of a notary public; and

(L) complete the process within 90 days of the application's receipt in the council office.

(4) Institutional Sex Offender Treatment Provider (ISOTP). To be eligible as an ISOTP, the applicant shall meet at a minimum the following criteria:

(A) employed by the Texas Department of Criminal Justice-Institutional Division or the Texas Youth Commission;

(B) graduated from a regionally accredited undergraduate program preferably in a behavioral social science program or enrolled in regionally accredited graduate program in a behavioral science program;

(C) possess 12 hours documented continuing education annually approved by the Council in the specific area of sex offender assessment and treatment;

(D) adhere to Subchapter C. Council's Standards of Practice;

(E) adhere to Subchapter D. Code of Professional Ethics to the extent the adherence does not conflict with other laws;

(F) shall be supervised by an LSOTP as defined in paragraph (4)(A)-(D) of this section;

(G) shall comply with paragraph (1)(D)(i-iv) of this section;

(H) submit an application fee defined in §810.5 of this title;

(I) submit a copy of his or her undergraduate transcript and attest to the accuracy of the application;

(J) submit a copy of the LSOTP supervisor's license, indicating the applicant is current and in good standing;

(K) sign the application form(s) and attest to the accuracy of the application in the presence of a notary public; and

(L) complete the process within 90 days of the application's receipt in the council office.

(M) This license is only valid for employees within the Texas Department of Criminal Justice-Institutional Division and Texas Youth Commission providing institutional sex offender treatment to institutionalized adult or juvenile sex offenders.

(5) Licensing Out-of-State Applicants. The council may waive any prerequisite to licensing for an application after receiving the applicant's credentials and determining that the applicant holds a valid sex offender treatment license from another state that has license requirements substantially equivalent to those of this state.

(6) Specialized Competencies. Licensed Sex Offender Treatment Providers with specialized competencies in the assessment and treatment of juveniles with sexual behavior problems, female sex offenders, and/or developmentally delayed sex offenders may have those competencies documented by the Council, provided the following criteria is met:

(A) possess at least 250 documented and verified hours experience with each population in the assessment and treatment of juveniles with sexual behavior problems, female sex offenders, or developmentally delayed sex offenders; these hours may be part of the original training and experience hours required for the new application and original CE requirements up to seven years prior;

(B) possess a minimum of 24 hours of documented continuing education training with each population in the assessment and treatment of juveniles with sexual behavior problems, female sex offenders, or developmentally delayed sex offenders; these hours may be part of the original training and experience hours required for the original certification;

(C) possess a minimum of three hours of documented continuing education training with each population in the assessment and treatment of juveniles with sexual behavior problems, female sex offenders, or developmentally delayed sex offenders for renewal of the specialized competencies; and

(D) pay an annual or biennial fee for each specialty as defined in §810.5 of this title.

(7) Supervision. All ASOTP's, PSOTP's, and ISOTP's, providing sex offender treatment shall be supervised. Supervision will include the following:

(A) An ASOTP, PSOTP, and ISOTP providing sex offender treatment is required to be under the supervision of a LSOTP supervisor approved by the Council. The ASOTP, PSOTP, or ISOTP shall provide a copy of supervision documentation to the council during the renewal period.

(B) An LSOTP that has not been a supervisor approved by the Council prior to the effective date of this rule shall meet the following criteria:

(i) possess five years experience as an LSOTP;

(ii) sign and acknowledge the LSOTP supervisor's responsibilities form;

(iii) submit an annual credentialing fee as defined in §810.5 of this title; and

(iv) obtain three hours documented continuing education in the supervision of sex offender treatment providers each renewal period; and

(C) An ASOTP, PSOTP, and ISOTP shall receive face-to-face supervision at least one hour per week. Exceptions to supervision requirements shall be approved on a case-by-case basis by the council.

(D) The supervising LSOTP shall submit the required documentation to the council at the time of their renewal; the documentation shall contain the name(s) of the ASOTP(s), PSOTP(s), and ISOTP(s) and hours that each have been supervised during the renewal cycle. The supervising LSOTP shall be required to use the form(s) provided by the council.

(8) License Certificates. Upon successful completion of the application or renewal process, licensees shall receive an official certificate and renewal cards from the council. This certificate shall be displayed at all locations where sex offender treatment is provided. As

set out in §810.5(7) of this title, duplicate certificates may be obtained for a nominal fee.

(A) The Council shall prepare and provide to each licensee a certificate and initial and renewal cards, which contains the licensee's name and certificate number.

(B) A licensee shall not display a license certificate or renewal cards which have been reproduced or is expired, suspended, or revoked.

(C) A license certificate(s) or renewal card(s) issued by the council remains the property of the council and shall be surrendered to the council upon demand.

(D) The address and telephone number of the council shall be displayed at all locations where sex offender treatment is conducted and/or the licensee shall provide a copy to the client on initial intake for the purpose of directing complaints against the licensee to the council.

(9) Application processing. The council shall comply with the following procedures in processing applications for a license.

(A) The following times shall apply from a completed application receipt and acceptance date for filing or until the date a written notice is issued stating the application is deficient and additional specific information is required. A written notice of application approval may be sent instead of the notice of acceptance of a complete application. The times are as follows:

(i) letter of acceptance of application for licensure renewal--30 days; and

(ii) letter of initial application deficiency--30 days.

(B) The following times shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The times for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The times are as follows:

(i) approval of application - 42 days; and

(ii) letter of denial of licensure - 90 days.

(10) Refund processing. The council shall comply with the following procedures in processing refunds of fees paid to the council. In the event an application is not processed in the times stated in paragraph (6)(A) of this section:

(A) The applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive director. If the executive director does not agree that the time has been violated or finds that good cause existed for exceeding the time, the request will be denied.

(B) Good cause for exceeding the time is considered to exist if the number of applications for a license or renewal exceeds by 15% or more the applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by the council in the application process caused the delay; or any other condition exists giving the council good cause for exceeding the time.

(C) If the executive director denies a request for reimbursement under subparagraph (A) of this paragraph the applicant may appeal to the council for a timely resolution of any dispute arising from a violation of the processing times. The applicant shall give written notice to the council at the address of the council that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time. The executive director shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time. The council shall provide written notice of the decision to the applicant and the executive director. The council shall decide an appeal in favor of the applicant, if the applicable time was exceeded and good cause was not established. If the council decides the appeal in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(D) The times for contested cases related to the denial of a license or renewal are not included with the times listed in paragraphs (6)(A) and (6)(B) of this section. The time for conducting a contested case hearing runs from the date the council receives a written hearing request until the council's decision is final and appealable. A hearing may be completed within three to nine months, but may be shorter or longer depending on the particular circumstances of the hearing, the workload of the department and the scheduling of council meetings.

§810.4. License Renewal.

In order to maintain eligibility for the licensure as a sex offender treatment provider, the mental health or medical license of each renewal shall be current and active. All renewal applicants shall comply with the following:

(1) Number of continuing education hours. All annual renewal applicants shall include by the end of every fiscal year, a minimum of 12 hours of documented continuing education. Three hours shall be in ethics and nine hours shall be in sex offender assessment and treatment of which three hours may be in sexual assault victim related training beginning September 2006. All biennial renewal applicants shall include by the end of the two-year cycle, a minimum of 24 hours of documented continuing education. Six hours shall be in ethics and 18 shall be in sex offender assessment and treatment of which six hours may be in sexual assault victim-related training, beginning September 2006.

(2) Renewal forms. All renewal applicants shall submit renewal forms provided by the council and renewal fees defined in §810.5 of this title (relating to Fees).

(3) License expiration. All licenses expire September 30, no matter the date of initial license.

(4) Renewal application postmark date. All renewal applications shall be postmarked by September 30 or a late fee shall be assessed.

(5) Continuing education activities. Licensees shall request pre-approval of hours from the council before attending continuing educational training. Continuing education activities related to the assessment and treatment of sex offenders or sexual assault victim related training shall be instructor-directed activities such as conferences, symposia, seminars, and workshops.

(6) Continuing education hours will be credited for approved, didactic presentations within the context of a professional conference or seminar. On the job training, field trips, supervision, and courses taken at an institution of higher learning shall not be credited with continuing education hours.

(7) Online, home, or self-directed study courses must be pre-approved by the council.

(8) Presentation of continuing education. All renewal applicants may count a maximum of four hours per renewal period for the presentation of continuing education training, lectures, or courses in the specific area of sex offender treatment and assessment, sexual assault issues and/or victim training.

(9) Carrying over continuing education hours. No hours may be carried over from one renewal period to another renewal period.

(10) Continuing education extension.

(A) A licensee who has failed to complete the requirements for continuing education (CE) may be granted a 90-day extension by the executive director.

(B) The request for an extension of the CE period shall be made in writing and shall be postmarked prior to September 30.

(C) If an extension is requested, a late fee equal to one-half of the renewal fee stated in §810.5(6) of this title will be assessed.

(D) The next CE period shall begin the day after the CE requirement have been satisfied.

(E) Credit earned during the extension period cannot be applied toward the next CE period.

(F) A person who fails to complete the CE requirements during the extension or who does not request an extension holds an expired license and shall not use the title of LSOTP ASOTP, PSOTP, or ISOTP or practice sex offender treatment.

(11) Completion of continuing education within the extension period. A license may be renewed upon completion of the required CE within the given extension period, submission of the license form, and payment of the applicable late renewal fee.

(12) Failure to complete continuing education. A person who fails to complete CE requirements for renewal and failed to request an extension to the CE period may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining a license.

§810.5. Fees.

The council has established the following license fees.

(1) All new LSOTP, ASOTP, and PSOTPs applicants shall submit a non-refundable annual application fee of $200 or $300 for a biennial application fee. All ISOTP applicants shall submit a non-refundable application fee of $20. All renewals shall include a nominal electronic renewal fee if applicable, as established by the contracting agency. Renewal fees are subject to the exception in the Occupations Code, §110.302(c). All applicants shall comply with the following requirements:

(A) return the completed, signed application form provided by the council;

(B) submit the license fee in the form of a check or money order or if renewing online by credit card; and

(C) submit, within 90 calendar days any documentation required.

(2) Applicants that meet the specialized competency criteria involving the treatment of juveniles, females, or developmentally delayed populations shall submit a non-refundable annual specialty fee of $20 or a $40 biennial specialty fee.

(3) Licensees that meet the LSOTP supervisor criteria and who seek to be designated as an approved supervisor shall submit a non-refundable annual credentialing fee of $20 or a $40 biennial credentialing fee.

(4) Additional fees will be charged for Federal Bureau of Investigations and Texas Department of Public Safety criminal background checks. Fees shall be determined by those agencies conducting the investigation.

(5) Renewal forms and information shall be mailed to each licensee at least 60 days prior to license expiration and mailed to the licensee's last address of record with the council.

(6) To renew, an LSOPT, ASOTP, or PSOTP shall submit a non-refundable annual renewal fee of $100 or $200 for a biennial renewal. To renew, an ISOTP shall submit a non-refundable renewal fee of $20. All license renewals shall submit a nominal electronic renewal fee if applicable, as established by the contracting agency. Renewal fees are subject to the exception in the Occupations Code, §110.302(c). All applicants shall comply with the following requirements.

(A) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required license fee to the council on or before the expiration date of the license.

(B) Licensees renewing specialized competencies shall be charged a non-refundable annual fee $20 or a $40 biennial fee per specialty listed.

(C) If a license has been expired for 90 days or less, the late renewal fee is equal to one and one-half times the required renewal fee.

(D) If a license has been expired for longer than 90 days but less than one year, the reinstatement fee is equal to two times the required renewal fee.

(E) If a license has been expired for one year or longer, the individual may obtain a new license by submitting and complying with the requirements and procedures for obtaining an original license.

(7) Licensees who request a duplicate certificates shall be charged a non-refundable fee of $10 per certificate.

(8) Effective January 1, 2004, for all applications and renewal applications, the council is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through the Texas Online.

(9) Effective January 1, 2004, for all applications and renewals, the council is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

§810.7. Documentation of Experience and Training.

In determining the acceptability of the treatment provider's experience and/or training, the council shall require documentation of experience and/or training regarding the quality, scope, and nature of the applicant's experience in the assessment and treatment of adult sex offenders and or juveniles with sexual behavior problems. This will include two reference letters from professionals who practice sex offender treatment and can attest to the applicant's work in sex offender treatment.

§810.8. Revocation, Denial or Non-Renewal of a License.

(a) The council shall have the right to revoke a license, deny an application for licensure, and/or refuse to renew a license upon proof that the treatment provider has:

(1) been convicted or adjudicated of any felony, or a misdemeanor involving a sexual offense or sexually motivated offense; has ever received deferred adjudication for a sexual offense, or has been required to register as a sex offender in this state under Texas Code of Criminal Procedure, Chapter 62, or under any other law;

(2) had his/her mental health or medical licensure placed on inactive status, not renewed, revoked, or canceled, by any professional licensing body;

(3) been determined by any professional licensing body to have engaged in unprofessional or unethical conduct, unless sufficient

evidence of rehabilitation has been established as determined by the council;

(4) been determined by the council to have engaged in deceit or fraud in connection with the delivery of services, supervision, or documentation of licensure requirements;

(5) violated the Act or any rule adopted by the council;

(6) been prohibited from renewal by the Education Code, §57.491 (relating to Loan Default Ground for Non-renewal of Professional or Occupational License); or

(7) been prohibited from renewal by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License for Failure to Pay Child Support or Observe a Child Custody Order).

(b) The council may take action against a licensee or deny an application or renewal in accordance with Occupations Code, Chapter 53, if the licensee has felony or misdemeanor convictions.

(c) The following felonies and misdemeanors directly relate to a licensee because these criminal offenses indicate an inability or tendency to be unable to perform as a LSOTP, ASOTP, or ISOTP:

(1) an offense involving moral turpitude;

(2) failure to report child abuse or neglect;

(3) a misdemeanor involving deceptive business practices;

(4) any felony or misdemeanor conviction involving a sexual offense, or having received deferred adjudication for a sex offense;

(5) the felony offense of theft;

(6) any offense of assault; and

(7) any other misdemeanor or felony which would indicate an inability or tendency to be unable to perform as a LSOTP, ASOTP, PSOTP, or ISOTP.

(d) Documentation of rehabilitation may include the following:

(1) court records related to the conviction;

(2) documents related to the sentence imposed;

(3) documents of completion of the sentence;

(4) documents of satisfactory completion of probation or parole;

(5) information about subsequent good conduct;

(6) letters of support from employers or others.

§810.9. Complaints, Disciplinary Actions, Administrative Hearings and Judicial Review.

(a) Reporting a complaint. A person shall report an alleged violation of the Act or this chapter by a licensee or other person by notifying the executive director. The initial notification shall be in writing, by fax, or by personal visit to the council office.

(b) Review of complaint.

(1) The executive director shall review the complaint for violations of the Act or any rule adopted by the council.

(2) If it is determined that a violation of the Act or these sections may have occurred, the executive director or executive director's designee shall:

(A) notify the complainant in writing of receipt of the complaint;

(B) notify the licensee or other person in writing, by phone or in person that a complaint has been filed; and

(C) provide a copy of the complaint to the licensee's mental health or medical licensing agency.

(c) Responsibilities of licensee.

(1) A licensee shall cooperate with the council by furnishing all required documents or information and by responding to a request for information or a subpoena issued by the council or its authorized representative.

(2) A licensee shall comply with any order issued by the council relating to the licensee. A licensee shall not interfere with a council investigation by the willful misrepresentation of facts to the council or its authorized representative or by the use of threats or harassment against any person.

(3) The subject of the complaint shall be notified of the allegations either in writing, by phone or in person by the executive director or designee and will be required to provide a response to the allegations within 20 calendar days of that notice.

(4) Failure to respond to the allegation within the 20-day period is evidence of licensees failure to cooperate with the investigation and may subject the licensee to disciplinary action.

(d) Actions by the council. The council is authorized to revoke, suspend or deny to renew a license, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of the Act, or a rule of the council.

(e) Probated Suspension. If the suspension is probated, the council is authorized by Occupations Code, §110.354, to impose certain requirements and limitations on a person.

(f) Disciplinary action on the mental health or medical license. If a licensee's mental health or medical license is revoked or suspended, the council may propose to revoke a licensed issued under this chapter.

(g) Complaint information. The council shall maintain information about each complaint filed with the council. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all witnesses contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint;

(6) for a complaint for which the Council took no action, an explanation of the reason the complaint was closed without action; and

(7) complaints shall be retained for seven years from the date of closure.

(h) Formal hearing.

(1) The formal hearing shall be conducted according to the provisions of the Texas Government Code, Title 10, General Government, Chapter 2001, Administrative Procedure Act and held in Travis County, Texas, unless otherwise determined by the Administrative Law Judge (ALJ) or upon agreement of the parties.

(2) Prior to institution of formal proceedings to revoke or suspend a license, the executive director shall give written notice to the

licensee by certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension, and the person shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(3) To initiate formal hearing procedures, the executive director shall give the licensee written notice of the opportunity for hearing. The notice shall state the basis for the proposed action. Within 20 calendar days after receipt of the notice, the licensee shall give written notice to the executive director that the licensee either waives the hearing and either surrenders the license, or accepts the proposed sanction, or requests an informal settlement conference and or a formal hearing. Receipt of the notice is deemed to occur on the seventh calendar day after the notice is mailed to the licensee's last reported address unless another date of receipt is reflected on a U.S. Postal Service return receipt.

(A) If the licensee fails to request a hearing, the licensee is deemed to have waived the hearing, and a default order may be entered by the council.

(B) If the licensee requests an informal settlement conference and/or a formal hearing within 20 calendar days after receiving the notice of opportunity for hearing, the executive director shall initiate an informal settlement conference and or formal hearing procedures in accordance with this section.

(i) Final action.

(1) If the council suspends a license, the suspension remains in effect for the period of suspension ordered, or until the executive director or the council determines that the reasons for suspension no longer exist. The licensee whose license has been suspended is responsible for securing and providing to the executive director such evidence, as may be required by the council, that the reasons for the suspension no longer exist. The executive director or the council shall investigate prior to making a determination.

(2) During the time of suspension, the former licensee shall return all license certificates to the council.

(3) If a suspension overlaps a renewal period, the former licensee shall comply with the normal renewal procedures in these sections. The council shall not renew the certificate until the executive director or the council determines that the reasons for suspension have been removed.

(4) A person whose application is denied or whose license certificate is revoked is ineligible to apply for licensure under this Act for one year from the date of the denial or revocation.

(5) Upon revocation or non-renewal, the former licensee shall return all certificate(s) and renewal card(s) issued to the licensee by the council. The certificate(s) and renewal card(s) shall be returned to the council by certified mail, hand-delivered, or by a delivery service, within 30 days of request.

(j) Appeal of a decision. A person may appeal a final decision of the council by filing a petition for judicial review in the manner provided by the Government Code, §2001.176.

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

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Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 458-7236

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SUBCHAPTER B. CRIMINAL BACKGROUND CHECK

22 TAC §§810.31 - 810.34

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

§810.31. Access to Criminal History Records.

§810.32. Records.

§810.33. Destruction of Criminal History Records.

§810.34. Frequency of Criminal Background Check.

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

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22 TAC §§810.31 - 810.34

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.31. Access to Criminal History Records.

The council is authorized to obtain information about the conviction or deferred adjudication that relates to an applicant seeking licensure and maintained by the Texas Department of Public Safety or the Federal

Bureau of Investigation. The council shall obtain a criminal history record from any law enforcement agency. The criminal history record information received under this section is for the exclusive use of the council and is privileged and confidential. The criminal history record information shall not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the applicant.

§810.32. Records.

All other records of the council that are not made confidential by other law are open to inspection by the public during regular office hours. The contents of the criminal background check on each licensee are not public records and are confidential under lock and key security. Unless expressed in writing by the chairperson of the council, the executive director and the executive director's designee are the only staff authorized to have daily access to the criminal history records. These records will be maintained in separate files and not in the licensee files.

§810.33. Destruction of Criminal History Records.

The council shall destroy adjudication information relating to a person after the council makes a decision on the eligibility of the applicant unless the information was the basis for a proposed revocation, suspension or refusal to renew a person's license. The council shall shred the information provided by the Texas Department of Public Safety, the Federal Bureau of Investigation or any other law enforcement agency, and the submitted applicant's fingerprint card.

§810.34. Frequency of Criminal Background Check.

The council shall conduct a criminal background check on every new applicant, randomly at the time of renewal, and as deemed necessary.

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

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SUBCHAPTER C. STANDARDS OF PRACTICE

22 TAC §§810.61 - 810.67

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

§810.61. Introduction to Standards of Practice.

§810.62. Council Assertions.

§810.63. Assessment/Evaluation Concerns.

§810.64. Juveniles with Sexual Behavior Problems.

§810.65. Adult Female Sex Offenders.

§810.66. Developmentally Delayed Clients.

§810.67. Pertinent Issues to Be Addressed in Treatment (Adults and Juveniles).

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

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22 TAC §§810.61 - 810.67

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.61. Introduction to Standards of Practice.

(a) The Council on Sex Offender Treatment (council) is dedicated to the prevention of sexual assault through effective treatment and management of sex offenders. The council identifies treatment providers who have the appropriate training and experience in the treatment of adult sex offenders and juveniles with sexual behavior problems, sponsors training seminars and conferences, and disseminates information regarding adult sex offenders and juveniles with sexual behavior problems and their treatment. The council maintains a database of sex offender treatment providers, which contains the names of persons who have satisfactorily completed council requirements for licensure.

(b) Sexual deviance is a learned or acquired behavioral disorder but may also be influenced by biological factors. Treatment is focused on recognizing, modifying and managing deviant behavior and the attitudes that promote it. Sexual deviance is not considered to be a disease that can be cured. The focus of contemporary treatment is on techniques designed to assist adult sex offenders and juveniles with sexual behavior problems in maintaining control throughout their lifetime. Therefore, treatment should include simple, practical techniques that can be used during and after formal treatment.

(c) Assessment and treatment requires an approach unfamiliar to most mental health professionals. Treatment providers often exercise substantial control over the lives of their clients because of the concern for community protection. For this and other reasons, standards of practice specific to the treatment of these clients are necessary.

(d) This document was developed by the council to delineate appropriate assessment and treatment procedures and policies. These standards were developed by reference from the Association for the Treatment of Sexual Abusers (ATSA) publication entitled, Ethical Standards and Principles for the Management of Sexual Abusers,

Revised 2005. These standards delineate professional licensing expectations for the treatment of adult sex offenders and juveniles with sexual behavior problems.

§810.62. Council Assertions.

(a) Licensees shall:

(1) be committed to community protection and safety and licensees shall be aware of any professional and legal obligations regarding a duty to protect or warn;

(2) not make statements that a client is no longer at any risk to reoffend (ATSA Standard);

(3) not provide evaluation or re-evaluation services for purpose of determining if someone is guilty or innocent of a specific sexual crime. Psychological profiles shall not be used to prove or disprove an individual's propensity to act in a sexually deviant manner or someone's guilt or innocence. Physiological methods or sexual arousal and preference assessments shall not be used to prove an individual's guilt or innocence of a specific sex crime;

(4) recognize and when providing expert testimony, acknowledge that there is no known psychological or physiological test, profile, assessment procedure, or combination of such tools that prove or disprove whether the client has committed a specific sexual crime (ATSA Standard);

(5) not discriminate against clients with regard to race, sex, religion, gender preference, choice of lifestyle, or disability;

(6) treat clients with dignity and respect, regardless of the nature of their crimes or conduct;

(7) be knowledgeable of legal statutes and scientific data relevant to this area of specialized practice;

(8) perform professional duties with the highest level of integrity, maintaining confidentiality within the scope of statutory responsibilities;

(9) ensure that the client fully understands the scope and exceptions to confidentiality in the context of his or her particular situation;

(10) refrain from using professional relationships to further their personal, religious, political, or economic interest other than accepting customary professional fees;

(11) not engage in sexual relationships with clients;

(12) fully inform clients in advance of fees for services;

(13) refrain from knowingly providing treatment services to a client who is in treatment with another professional without initial consultation with the current licensee;

(14) make appropriate referrals when the licensee is not qualified or is otherwise unable to offer services to a client;

(15) ensure that colleagues are qualified by training and experience before making a referral;

(16) when withdrawing services, minimize possible adverse effects on the client and the community by continuing treatment until the client has been referred into a new sex offender treatment program;

(17) facilitate the provision of follow-up services for clients who transition from one program or one jurisdiction to another which includes a written summary of the assessment of risk, offending pattern, level of participation, relevant problems and treatment needs, client strengths and deficits, support group, and recommendations;

(18) take into account the legal/civil rights of the clients, including the right to refuse treatment;

(19) make no claims regarding the efficacy of treatment that exceed what can be reasonably expected and supported by empirical literature;

(20) avoid drawing conclusions or rendering opinions that exceed the present level of knowledge in the field or the expertise of the evaluator;

(21) report to the appropriate licensing or regulatory authority unethical, incompetent, and dishonorable treatment or assessment practices; and

(22) display or provide in writing the address and telephone number of the council in all sites where sex offender treatment services are provided for the purpose of directing complaints to the council.

(b) Licensees shall utilize the following principles within their practices:

(1) community safety shall take precedence over any conflicting consideration and ultimately, treatment providers shall act in the best interests of society, the victim, and the client;

(2) the containment model includes but is not limited to the communication, cooperation, exchange of information (Article 42.12, Code of Criminal Procedure, §9, subsection (j), (k), and (l)) and coordination with community supervision officers, child protective services workers, law enforcement, polygraph examiners, survivor's therapists, support persons and is essential to community protection. This collaboration can increase the effectiveness of community risk management strategies. A close working relationship recognizes that sexual abuse is criminal behavior and that legal sanctions apply. Treatment targets and supervision conditions are most effective when they are consistent with one another and should focus on criminogenic needs (ATSA Standard);

(3) a voluntary client accepted for treatment shall be held to the same standards of compliance as are mandated adult sex offenders and juveniles with sexual behavior problems;

(4) shall not to release an untreated client without providing offense-specific assessment and treatment or specialized supervision;

(5) comprehensive assessment of the client shall precede treatment and includes issues addressed in §810.63 of this title (relating to Assessment/Evaluation Standards);

(6) adult sex offenders and juveniles with sexual behavior problems require comprehensive, long term, offense-specific treatment. Cognitive-behavioral approaches that utilize sex offender groups have been recognized as the standard method of treatment. Treatment groups for non-developmentally delayed adults and juveniles with sexual behavior problems shall be at least 90 minutes in length with no more than 12 clients per group. If treatment groups are utilized for developmentally delayed adults or juveniles, groups shall be at least 60 minutes in length with no more than eight clients per group. Self-help groups, drug intervention, or time-limited treatment shall be used only as adjuncts to more comprehensive treatment;

(7) a written initial individualized treatment plan that identifies the issues, intervention strategies, and goals of treatment shall be prepared for each client within 30 days of the referral. Treatment plans should be reassessed at least annually;

(8) the treatment plan shall include behavioral contracts which outline specific expectations of the client, his/her family, and the client's support systems. These contracts shall include provisions

to avert high-risk situations. These contracts shall be reassessed annually;

(9) progress, or lack thereof, shall be clearly documented in treatment records. Specific achievements, failed assignments and rule violations should be recorded. This information should be provided to the appropriate supervising officer in the justice system;

(10) progress in treatment shall be based on specific, measurable objectives, observable changes, and demonstrated ability to apply changes in relevant situations. For most adult sex offenders and juveniles with sexual behavior problems, progress requires changes in the client's behavior, attitudes, social and sexual functioning, cognitive processes, and sexual arousal/preference patterns. These changes shall be demonstrated by an increased understanding by the client of his/her own deviant behavior, understanding of current and instant offense cycle, increase in pro-social behaviors, compliance with supervision, increase in support systems, sensitization to the effects on a survivor, and ability to seek and apply help;

(11) communication among the treatment team is critical in sex offender assessment and treatment; therefore, monthly progress reports shall be issued to the supervision officer with the client receiving a copy. Discharge reports shall be issued according to the referring agency policy;

(12) when a client has made the changes required in treatment, there should be a gradual and commensurate decline of intervention, support, and supervision following an offense-specific treatment program;

(13) there will be instances when the licensee shall refuse to treat a client because essential ancillary resources do not exist to provide the necessary levels of intervention or safeguards;

(14) the licensee shall have an ethical obligation to refer the client to a more comprehensive treatment program and/or to the judicial system, when the licensee determines that a client is not making the changes necessary to reduce the client's risk to the community;

(15) licensee shall communicate to the supervising officer in the justice system, failure on the part of clients to abide by their treatment plans and/or contracts;

(16) a licensee may decide to decline further involvement with a client who refuses to address any critical aspect of treatment;

(17) a licensee shall immediately notify the appropriate authority when a client refuses or fails to comply with court-ordered treatment;

(18) most adult sex offenders and juveniles with sexual behavior problems enter the criminal justice system with varying degrees of denial regarding their behavior. Overcoming denial is a gradual process achieved in treatment. The existence of some degree of denial shall not preclude a client from entering treatment, although the degree of denial shall be a factor in identifying the most appropriate form and location of treatment;

(19) treatment is unlikely to be effective unless the client admits to the criminal sexual behavior. Community based treatment may not be appropriate for clients who continue to demonstrate complete denial after a trial period of treatment;

(20) a licensee shall not rely exclusively on self report by the client to assess progress or compliance with treatment requirements and/or conditions of probation or parole. Licensees shall rely on multiple sources of information which may include physiological methods such as polygraph or phallometric, and other research-based sexual interest assessments including but not limited to the Card Sort or visual reaction time methods;

(21) physiological methods or measures of sexual interest assessment shall not replace other forms of monitoring but may improve accuracy when combined with active surveillance, collateral verifications, and self-report. Penile plethysmograph (PPG) assessments in Texas shall be conducted under the direction of a licensed practitioner defined in Chapter 1, Health and Safety Code, §1.005. Licensees should refer the client for a polygraph exam as soon as possible if the client is suspected of engaging in suppression behaviors on the PPG. The strongest single predictor of sexual offense recidivism for sex offenders is the measure of deviant sexual arousal as measured by phallometric assessment (Hanson and Bussiere 1998);

(22) polygraph examinations shall only be conducted by licensed examiners that meet and adhere to the "Recommended Guidelines for the Clinical Polygraph Examinations of Sex Offenders" as developed by the Joint Polygraph Committee on Offender Testing (JPCOT). Polygraphs are effective in encouraging disclosure of behaviors and adherence to rules. This procedure should never be the only method used to determine factual information. It is the licensees responsibility to prepare the client for any polygraph. Sexual history polygraphs are effective in determining a client's risk to the community. Sexual history polygraphs shall include all aspects of a client's sexual behaviors and a victim's list. Instant sexual offense polygraphs shall not be conducted without the official offense report. The licensee shall have the official offense report in order to adequately prepare the client for the polygraph. Additionally, the polygraph examiner shall have the official offense report in order to conduct the polygraph examination;

(23) informed, voluntary consent shall be obtained prior to engaging clients in aversive conditioning;

(24) a sex offender who has been convicted or adjudicated of a sexual offense against a child or demonstrates deviant arousal and/or deviant sexual interest in children shall be removed from the primary residence in which the child or children reside until appropriate safeguards exist;

(25) In balancing the needs of the client against the safety of the children, the safety of the children takes precedence. The highest priority shall be given to the rights, well-being, and safety of children when making decisions about contact between the client and children. If the client has a history of deviant sexual arousal and/or deviant sexual interest to or reported fantasies of sexual contact with children, client shall be restricted from having access to children. Supervised visits may be considered if:

(A) it is determined that sufficient safeguards exist;

(B) the sex offender has demonstrated control over his or her deviant arousal;

(C) it does not impede the sex offender's progress in treatment; and

(D) court mandated conditions do not prohibit such contact;

(26) treatment referrals should be offered to the non-offending partners and children in cases where a parent or legal guardian has been removed;

(27) there is evidence to support family participation in the treatment of the adult sex offender and the juvenile with sexual behavior problems. Where feasible and appropriate, spouses and other family members shall be included. Sexual assault survivors or vulnerable chil-

dren shall be excluded until such time as joint therapy is determined to be appropriate;

(28) licensees shall assist in the selection and education of the potential chaperones for contacts between the client and children. Potential chaperones shall only be adults who accept and understand the client's present sexual offense, past sexual offending, and the potential for sexual re-offense. Licensees shall ensure potential chaperones are educated regarding the client's sexual history, treatment and supervision conditions, antecedents to sexual offending, safety plans, relapse prevention, and reporting procedures. Licensees shall review a detailed safety plan with the child's non-offending parent or legal guardian that describes the appropriate levels of supervision for contact, privacy, discipline practice, sexual education, appropriate dress, hygiene, bedtime routines, conditions and limits that may apply, and how contact will be terminated if it is no longer appropriate for the child (ATSA Standard);

(29) the licensee shall make every effort to collaborate with the survivor's therapist in making decisions regarding communication, visits and reunification. Licensees shall be sensitive to the survivor's wishes and needs regarding contact with the offender. Contact shall be arranged in a manner that places child/victim safety first. When assessing child safety, both psychological and physical well-being shall be considered. The licensee shall ensure that custodial parents or legal guardians of the children have been consulted prior to authorizing contact and that contact is in accordance with Court directives; and

(30) if reunification is deemed appropriate with the survivor's therapist, the process shall be closely supervised. There shall be provisions for monitoring behavior and reporting rule violations. A survivor's comfort and safety shall be assessed on a continuing basis. The licensee shall recognize that supervision during visits with children is critical for those whose crimes are against children, or who have demonstrated the potential to abuse children. The supervisor of the contact shall be knowledgeable concerning sexually offending behaviors.

§810.63. Assessment/Evaluation Standards.

(a) The assessment/evaluation focuses on both the risks and needs of the client, as well as identifying factors from social and sexual history, which may contribute to sexual deviance. Assessments provide the basis for the development of comprehensive treatment plans and shall provide recommendations regarding the intensity of intervention, specific treatment protocol needed, amenability to treatment, as well as the identified risk the adult sex offender and the juvenile with sexual behavior problems presents to the community. There is no known set of personality characteristics that can differentiate the sex offender from the non-sex offender. Psychological profiles cannot be used to prove or disprove an individual's propensity to act in a sexually deviant manner.

(b) The following standards were developed by reference from the Association for the Treatment of Sexual Abusers publication entitled, Ethical Standards and Principles for the Management of Sexual Abusers, Revised 2005. Assessments shall precede treatment. In preparing assessments of sex offenders, licensees shall:

(1) be fair and impartial, providing objective and accurate data;

(2) respond only to referral questions that fall within the licensee's expertise and present level of knowledge;

(3) be respectful of the client's right to be informed of the reasons for the assessment and the interpretation of data, as well as the basis for recommendations and conclusions;

(4) be aware of the client's legal status;

(5) be mindful of the limitations of client's self-report and make all possible efforts to verify the information provided by the client;

(6) use evaluative procedures and techniques sufficient to respond to the presenting issues, as well as to provide appropriate substantiation for the resulting conclusions and recommendations;

(7) acknowledge if an assessment consisted of only a review of data, with no client contact, and clarify the impact that limited information has on the reliability and validity of the resulting report;

(8) provide informed consent, releases and/or exceptions to confidentiality documents in written form and employ verbal explanations for non-readers;

(9) thoroughly review written documentation and collateral interviews. This involves gathering and reviewing information from all available and relevant sources, including:

(A) criminal investigation records;

(B) child protective services investigations;

(C) previous assessments and treatment progress reports;

(D) mental health records and assessments;

(E) medical records;

(F) TDCJ-Institutional Division reports;

(G) probation/parole reports;

(H) information regarding details of the offense as obtained by law enforcement; and

(I) official victim statements.

(10) cautiously interpret assessments conducted without collateral information;

(11) list and acknowledge in a written report assessment procedure summaries, conclusions, recommendations, and all collateral reports and interviews;

(12) not use re-interviews of survivors for the purpose of gathering information during the sex offender's assessment; and

(13) keep the sex offender and survivor's interview and assessment processes separate. The evaluator shall be extremely vigilant to avoid bias.

(c) The assessment shall include:

(1) mental status examination;

(2) clinical interview;

(3) personality assessment;

(4) intellectual assessment;

(5) sexual assessment; and

(6) recommendations for case management, treatment planning, and further assessments.

(d) Efforts shall be made to acquire the following information gathered in the assessment process:

(1) intellectual and cognitive functioning;

(2) mental status and psychiatric history;

(3) medical history of head injuries, physical abnormalities, enuresis, encopresis, current use of medication, allergies, accidents, operations, and major medical illnesses;

(4) self-destructive behaviors, self-mutilation, and suicide attempts;

(5) psychopathology and personality characteristics;

(6) family history and marital/relationship history;

(7) history of victimization; physical, emotional and/or sexual;

(8) education and occupation history;

(9) criminal history;

(10) history of violence and aggression including use of weapons;

(11) history of truancy, fire-setting, and abuse of animals;

(12) interpersonal relationships, both past and current;

(13) cognitive distortions;

(14) social competence;

(15) impulse control;

(16) substance abuse;

(17) official report regarding the instant offense;

(18) denial, minimization and inability to accept responsibility;

(19) sexual history including sexual development, adolescent sexuality and experimentation, dating history, intimate sexual contacts, gender identity issues, adult sexual practices, masturbatory practices, sexual dysfunction, fantasy content, and sexual functioning; and

(20) sexually deviant behavior, including description of offense behaviors, number of victims, gender and age of victims, frequency and duration of abusive sexual contact, victim selection, access, and grooming behaviors, use of threats, coercion or bribes to maintain victim silence, degree of force used before, during and/or after offense, and sexual arousal patterns.

(e) Licensees shall subscribe and adhere to the following tenets regarding client assessment.

(1) The comprehensive assessment of the client's sexually deviant behavior is specific to the ongoing assessment of the client.

(2) It is important to be sensitive to the individual's cognitive functioning, including reading and writing capabilities prior to arranging the battery of testing instruments.

(3) If a client is illiterate, arrangements for using a standardized approved auditory (taped or read) version of the test instrument should be made, to the extent such versions are available.

(4) The clinical interview shall incorporate sufficient discussion necessary to augment, clarify and explore the information obtained from the review of collateral materials (and interviews), as well as the other components of the assessment (testing results, etc.).

(5) Licensees shall obtain the official offense report to compare the degree of similarity or disparity between the client and the victim's statements.

(6) The client's explanations for false allegations shall be documented.

(7) Assessment of treatment needs shall identify strengths and weaknesses in the individual's psycho-sexual functioning for the purpose of directing treatment efforts to the appropriate areas.

(8) Both community safety and the degree to which a client is capable and willing to manage risk shall be considered when generating recommendations.

(9) A thorough assessment shall be completed prior to a client being accepted into treatment program.

(A) If a significant amount of time has lapsed between the assessment and when the individual applies for acceptance into a treatment program, an assessment update is required.

(B) An assessment update shall gather current data upon which the original treatment plan can either be confirmed or amended.

(10) A sex offender treatment provider shall never recommend an inadequate treatment program or level of risk management because existing resources limit or preclude adequate or appropriate services.

§810.64. Juveniles with Sexual Behavior Problems.

(a) Licensees shall subscribe and adhere to the following tenets regarding juveniles with sexual behavior problems:

(1) Before age 10, some children begin displaying sexually inappropriate behavior with others. Children may duplicate sexual behavior they have witnessed on the part of older siblings and/or adults. Therefore, early identification and treatment are essential for those who have displayed such behaviors.

(2) The onset of sexual behavioral problems in juveniles can be linked to numerous issues related to their experiences, exposure, and/or developmental deficits. Juveniles are distinct from their adult counterparts.

(3) Only a minority of juveniles manifest established paraphilic sexual arousal and interest patterns. These arousal and interest patterns are recurrent and intense, and related directly to the nature of the sexual behavior problem. In general, sexual arousal patterns of juveniles appear more changeable than those of adult sex offenders and relate less directly to their patterns of offending behavior.

(4) The treatment of juveniles with sexual behavior problems has the following components that are essential to the successful treatment of the juvenile. The program shall include a comprehensive assessment, progressive levels of treatment and education, relapse prevention, transition into the community, and aftercare. In order to effectively treat juveniles with sexual behavior problems the treatment shall be offense specific.

(5) Working with juveniles shall be based on a multidisciplinary approach and containment model that includes but is not limited to the juvenile, family, treatment provider, supervision officer, school officials, law enforcement, and the victim's therapist (if possible). On-going communication (written and verbal) is essential in the successful treatment of the juvenile.

(6) Treatment providers shall focus on the juvenile's existing strengths and positive support system to promote pro-social behaviors and facilitate change.

(7) Juveniles with sexual behavior problems come from all socio-economic, ethno-cultural, age, and religious backgrounds. They vary in their level of intellectual functioning, motivation, victim typology, and sexual behaviors.

(8) Treatment referrals should be offered to the non-offending guardians/parents and siblings where a juvenile has been removed.

(9) Juveniles who display sexually abusive behavior are effectively addressed by targeting risk factors that predispose a child to sexual behavior problems or that precipitate or perpetuate the problems.

(10) Special interventions are necessary for juveniles with intellectual and cognitive impairments.

(11) Juveniles who display sexually abusive behavior are heterogeneous groups who have developmental needs, but also have special needs and present special risks related to their abusive behaviors.

(12) Risk management strategies are effective in addressing the needs underlying the juvenile's behavior such as, but not limited to, child safety zones and/or plans, arousal modification, polygraphs, and sex education.

(13) The primary goal is helping juveniles gain control over their sexual behavior problems and increasing their pro-social interactions, preventing further victimization, halting development of additional psychosexual problems, and helping the juvenile develop age-appropriate relationships. They are children and adolescents first.

(14) Programs that only focus on sexual behavior problems are of limited value and researchers have recommended a holistic approach as in this section.

(b) Juvenile Assessment.

(1) The assessment shall focus on strengths, risks, and deficits of the juvenile with sexual behavior problems, as well as identifying factors from social and sexual history which may contribute to sexual deviance. Assessments provide the basis for the development of comprehensive treatment plans and shall provide recommendations regarding the intensity of intervention specific treatment protocol needed, amenability to treatment, as well as the identified risk the juvenile with sexual behavioral problems presents to the community. There is no known set of personality characteristics that can differentiate the juvenile with sexual behavioral problems from the juvenile without sexual behavioral problems. Psychological profiles cannot be used to prove or disprove an individual's propensity to act in a sexually deviant manner. A comprehensive evaluation and assessment of juveniles with sexual behavior problems is an ongoing process.

(2) The treatment of juveniles with sexual behavior problems is effective in reducing recidivism. In order for treatment to be effective, it shall incorporate both cognitive/ behavioral and relapse prevention approaches. A multifaceted program shall include the following:

(A) group and individual cognitive behavioral treatment;

(B) offense cycle/relapse prevention;

(C) family therapy;

(D) victim empathy;

(E) adjunct therapy including substance abuse treatment, anger and stress management, conflict resolution, sex education, social competence/life skills, clarifying, values, trauma resolution, problem solving, impulse control and interpersonal communication;

(F) psychopharmacological approaches (if appropriate);

(G) polygraphs (Family Code, Chapter 54, §54.0405); and

(H) visual reaction time or plethysmographs (if appropriate)

(3) When using phallometric assessment or aversive treatment techniques with persons 17 years of age or younger, consent for such assessment and treatment shall be obtained from the juvenile with sexual behavior problems and written consent for such assessment and treatment shall be obtained from the juvenile's parents or legal guardians, and the procedures should be reviewed by a multi-disciplinary professional or institutional advisory group. This is intended to ensure that individuals not intimately involved in the treatment of the juvenile have input regarding the appropriateness of such methods consistent with the developmental level of the child. Stimuli shall be specific for use with adolescents.

(4) The use of the plethysmograph with juveniles is an issue of some controversy. Research indicates that the age and level of denial of the juvenile may compromise the validity of the assessment. Younger juveniles appear to produce less reliable patterns of responding, and those who deny their offenses tend to produce suppressed, and therefore non-interpretable patterns of arousal (Becker et al, Kaeming et al, 1995).

(5) Individuals that are pre-pubescent or under age thirteen (13) shall not undergo phallometric assessment or aversive treatment except in rare cases, which shall be approved by a multi-disciplinary advisory group.

(6) Written consent shall be obtained for assessment and information exchange from the appropriate parent or legal guardian. Assent from the individual being evaluated shall be obtained whenever possible.

(c) Initial Juvenile Assessment.

(1) The assessment shall be age appropriate.

(2) The assessment shall be sensitive to any cultural, language, ethnic, developmental, sexual orientation, gender, medical and/or educational issues that may arise during the assessment.

(3) The assessment shall be developmentally appropriate which includes social, cognitive, and educational levels.

(4) A reasonable effort should be made to acquire the following information gathered in the assessment process:

(A) intellectual and cognitive functioning;

(B) mental status psychiatric history/hospitalization;

(C) medical history and an exam by a medical professional to determine sexual development;

(D) self-destructive behaviors including self-mutilation and suicide attempts;

(E) family origin and history/ relationship history including exposure to domestic violence;

(F) criminal history;

(G) sex offender registration status;

(H) history of violence and aggression;

(I) history of school truancy, fire-setting, abuse of animals, and running away;

(J) cognitive distortions;

(K) impulse control;

(L) trauma assessment (emotional, physical, sexual abuse);

(M) social and educational competence; sexual education/knowledge information;

(N) substance abuse;

(O) official reports regarding instant offense (Family Code, Chapter 54, §54.0405);

(P) sexual history including sexual development, sexuality and experimentation, gender identity issues, masturbatory practices, and fantasy content; and

(Q) sexually deviant behavior-including a description of the offense behaviors, number of victims, gender and age of victims, frequency and duration of sexual contact, victim selection, access, grooming behaviors, use of threats, coercion or bribes to maintain victim silence, degree of force used before, during and/or after the sexual behavior, and deviant arousal patterns.

(d) Collateral Information. The treatment provider shall thoroughly review written documentation and collateral interviews. This involves gathering and reviewing information from all available and relevant sources concerning the juvenile and the victim, including:

(1) parent(s) or guardian(s);

(2) siblings;

(3) statements from the victims;

(4) school records;

(5) child protective services;

(6) previous treatment providers;

(7) mental health professionals;

(8) law enforcement; and

(9) the following information should be provided from the supervision officer:

(A) exchange of formal documentation;

(B) order or judgment;

(C) victim information;

(D) juvenile risk assessment;

(E) data collection form; and

(F) official offense report.

(e) Use of Assessment Tools. Assessment tools have been described as a "critical dimension" to a comprehensive assessment of juveniles. The primary areas required in the assessment of the juvenile are as follows:

(1) intellectual and neurological functioning;

(2) personality (for example: Million Adolescent Criminal Inventory (MACI), Minnesota Multiphasic Personality Inventory for Adolescents - MMPIA);

(3) behavioral;

(4) sexual deviance; and

(5) co-morbidity.

(f) Risk Assessments. Current existing risk assessments should be used but the ultimate determination shall be a combination of the clinical interview and the assessment instruments. A strong predictor of risk is the sexual history polygraph. The sex history provides information about the juvenile's sexual behaviors and victims.

(1) Currently, there is no juvenile risk assessment that has been validated so decisions cannot be based solely on their outcomes.

(2) Risk assessment data is not useful for longer than six (6) months due to the fluidity of juveniles.

(3) Family support and structure are important in reducing risk for re-offense.

(4) Research on recidivism indicates juvenile's recidivate at relatively low rates in relation to new sexual offenses.

(5) Risk Assessments specific to juveniles are available in the public domain. Some examples are as follows:

(A) Estimate of Risk of Adolescent Sexual Offense Recidivism - ERASOR;

(B) Juvenile Sex Offender Assessment Protocol - JSOAP or JSOAP II;

(C) Child and Adolescent Needs and Strengths Sexual Development;

(D) Texas Juvenile Risk Assessment Instrument and Data Collection Form;

(E) Juvenile Risk Assessment Tool - J-RAT; and

(F) Protective Risk Factor Scale.

(g) Substance Abuse. It is important to use a valid and reliable assessment tool to screen for substance abuse problems in determining if the substance use is a risk factor in the sexual behaviors.

(h) Polygraphs. Polygraphs are used to facilitate more complete disclosures of sexual behaviors and to monitor compliance with treatment and supervision. The polygraph is an essential tool in offender accountability and honesty.

(1) Polygraphs shall be administered on a voluntary basis and with informed consent unless court ordered (Family Code, Chapter 54, §54.0405).

(2) Polygraph examinations shall follow JPCOT guidelines.

(3) Polygraphs should never be the only method used to determine factual information.

(4) Most practitioners using the polygraph indicate that the age threshold for use with juveniles is approximately 14 years old.

(5) The following polygraphs should be conducted: Instant Sexual Offense, Sexual History, Maintenance, and Monitoring.

(i) Assessment Recommendations. The following issues shall be addressed:

(1) the juvenile's strengths, risks, and deficits; and

(2) co-morbidity, placement, education/vocational needs, parent and family issues, substance abuse issues, and supervision.

(j) If the juvenile has a history of sexual arousal to reported fantasies of sexual contact with children of a particular age/gender group, the juvenile should be restricted from having unsupervised access to children in that identified target population. Supervised visits may be considered if:

(1) court mandated conditions do not prohibit such contact;

(2) it is determined that the sufficient safeguards exists including but not limited to safety plans approved by the treatment provider and supervision officer;

(3) the juvenile has demonstrated control over their deviant arousal; and

(4) it does not impede the juvenile's progress in treatment.

(k) Juvenile Laws. Treatment providers shall be familiar with the following laws concerning juveniles with sexual behavior problems.

(1) Occupations Code, Chapter 503.

(2) Health Insurance Portability and Accountability Act.

(3) Texas Family Code, Title 3, Chapter 51 et seq.

(4) Texas Family Code, §153.076-Duty to Provide Information.

(5) Code of Criminal Procedure, Chapter 62, Sex Offender Registration.

§810.65. Adult Female Sex Offenders.

Licensees shall subscribe and adhere to the following tenets regarding female sex offenders:

(1) Although the majority of sex offenders are male, research suggests that females commit 12% of all sexual offenses against victims under the age of 6 and 6% of the sexual offenses against children between 6 and 12 years old (Snyder, 2000).

(2) Female sex offenders are as likely to abuse males as females.

(3) Professionals shall recognize that females are capable of using their social position and power to exploit and harm those with whom they interact.

(4) Some females use instrumental and gratuitous violence in the commission of their crimes.

(5) Females are most likely to sexually abuse persons with whom they are acquainted. The majority of their victims are likely to be relatives.

(6) The treatment of female and male sex offenders are similar in that with both groups sex offender treatment providers shall balance treatment issues with offender accountability to the victims and the community at large.

(7) Females may experience deviant sexual arousal that can lead to sexual abuse.

(8) Like their male counterparts, females may experience sexual pleasure from their offending behavior.

(9) Females shall be assessed for deviant sexual interest and arousal using appropriate and validated physiological and psychological measures.

(10) Some female sex offenders co-offend with males.

(11) Removal of a client from a home in which children are at risk is often necessary to ensure the safety of those children.

(12) Treatment programs for female sex offenders shall be holistic in approach as referenced in §810.64 of this title and not only focused on sexual behavior.

(13) In assessing and evaluating female sex offenders, licensee shall refer to the appropriate rules in §810.63 or §810.64(b) and (c) of this title.

§810.66. Developmentally Delayed Clients.

(a) The management and treatment of clients with developmental disabilities is a developing specialized field. Currently many decisions regarding standards of practice must be made in the absence of clear research outcomes.

(b) These standards are based on the best practices known and designed to minimize any threat the client may pose to the community.

(c) There are many terms used to refer to the population of individuals with limited intellectual functioning, including developmentally delayed, developmentally handicapped, mentally ill, and mentally retarded.

(1) Licensees shall subscribe and adhere to the following tenets for developmentally delayed clients:

(A) A containment approach requires the integration of a collection of attitudes, expectations, laws, policies, procedures, and practices that have clearly been designed to work together.

(B) The presence of developmental disabilities does not minimize the risk for any client, nor does it mitigate the trauma experienced by sexual assault victims.

(C) Managing the risk, behavioral interventions, and the imposition of appropriate external controls shall be a priority for clients with disabilities.

(D) There is nothing inherent in the presence of developmental disabilities that cause sexually deviant behavior and nothing inherent in developmental disabilities which inoculates from sexually deviant behavior.

(E) Clients with disabilities shall be offered treatment that is appropriate to their developmental capacity, their level of comprehension, and the ability to integrate treatment components.

(F) The prevalence of sexually deviant behavior among this population is not known and might be due in part to the mental health service professional's reluctance to label the behavior.

(G) Studies suggest that developmentally delayed sex offenders have an overall offense pattern that is similar to non-delayed adult sex offenders or juveniles with sexual behavior problems.

(H) Developmentally delayed sex offenders are distinguished from non-delayed clients in that they display significantly more social skill deficits, are sexually naïve, lack interpersonal skill, have a higher incidence of family psychopathology, psychosocial deprivation, school maladjustment, and more psychiatric illness, and delinquent or criminal behavior (Health Canada, 2000).

(I) Progress in treatment and ability to integrate the components of treatment is generally slower for these clients. The need for simple, direct language, the presence of concrete thinking, difficulty with concepts and abstractions, and the need for frequent repetition are common requirements.

(J) Clients with developmental disabilities shall be offered treatment that is appropriate to their developmental capacity, their level of comprehension, and the ability to integrate treatment components. Group treatment shall be based on the level of functioning of the client. The single best indicator of the ability to function in this context is the client's actual functioning in a group setting.

(K) In cases where the client's level of functioning is determined to be too low for group treatment, the use of more individually oriented behavioral interventions coupled with external containment strategies might be used exclusively.

(L) If a client is unable to conceptualize the sequential cycle portion of the traditional relapse prevention plan, a reasonable alternative would be to focus on identifying risk situation or behaviors and appropriate interventions.

(M) Special needs groups shall be limited to 8 clients and shall be at least 60 minutes in duration. It may be necessary to conduct group twice per week.

(N) Clients who remain in significant denial and/or are extremely resistant to treatment after the finite period of extension determined by the treatment and supervision team should be terminated if they pose a continued risk to the community.

(O) Removal of a client from a home in which children are at risk is the recommended action. In balancing the needs of the client against the safety of the children, the safety of the children takes precedence.

(P) When treating developmentally delayed clients who have committed a sexual offense, it is essential to recognize their vulnerabilities and their risk of victimization by non-delayed clients.

(2) Assessments of the Developmentally Delayed Offender.

(A) Age equivalent assessment scoring does not correlate to sexual behavior in adults and licensees should guard against justifying sexually deviant behavior by indicating that the age equivalence score for any client has any relation to his or her victim typology.

(B) Developmentally delayed clients shall be given the opportunity to exercise their right to make a voluntary and informed decision to participate in treatment. A client shall be fully informed of the nature of the treatment, the benefits and the available options. In cases of intellectually handicapped sex offenders who are unable to give written consent, an interdisciplinary review and parent's or legal guardian's written consent shall be obtained for permission to proceed with treatment.

(C) There is limited data available regarding the use of the plethysmograph with developmentally delayed offenders. There is evidence that these clients tend to respond with generally higher levels of sexual arousal during testing. If a plethysmograph is conducted with this population, caution shall be used regarding interpretation and validity. Licensees shall utilize a stimulus package appropriate to the client's developmental level.

(D) Visual reaction time measures shall only be used with clients who have an IQ score sufficiently high to achieve valid and reliable test results. The Relapse Prediction Scores shall not be used as a part of the assessment since it uses a questionnaire not adapted for this population.

(E) Prior to conducting polygraph examinations on these clients the polygraph examiner shall collaborate with the treatment provider and the supervision officer to assess the client's ability to understand the concepts of truthfulness and deception or lying and the capacity to anticipate negative consequences based on deceptive responses. Results of polygraphs are more likely to reflect an error with this population and alternative steps should be taken to when results are inconclusive or deceptive and could result in termination or revocation.

(F) Polygraph examiners should design questions; conduct the pre-test, the examination, and the post-test at a level appropriate to the client's development.

(G) The assessment shall determine the client's level of functioning, appropriate treatment interventions, and facilitate the development of an individualized treatment plan. The assessment shall include:

(i) current level of functioning:

(I) cognitive and behavior functioning;

(II) level of planning the crime of conviction and other sexual history (Structured Interview, Collateral Information);

(III) expressive and receptive language skills (for example: Peabody Picture and Vocabulary Test Revised (PPVT-R);

(IV) social judgment, adaptive skills, and moral reasoning;

(V) sexual knowledge;

(VI) adaptive behavior (for example: Vineland Adaptive Behavioral Scale, Adaptive Behavioral Scale of the American Association for Mental Retardation);

(VII) criminal behavior

(VIII) attention deficit;

(IX) ability to function in groups;

(X) support systems (Current MHMR system involvement, family involvement, social involvement);

(XI) environmental or contextual factors that contribute to or maintain the behavior; and

(XII) trauma assessment (emotional, physical, sexual abuse).

(ii) official offense report/offense description:

(I) age and relation to the victim;

(II) details of the offense;

(III) past criminal behavior and/or sexually inappropriate behavior;

(IV) deviant sexual interest; and

(V) the extent of denial and cognitive distortions.

(iii) pertinent history:

(I) developmental history;

(II) family, marital, relationship, and personal background;

(III) medical, psychological and/or psychiatric/hospitalization history;

(IV) educational history;

(V) occupational history;

(VI) substance use or abuse;

(VII) self-destructive behaviors, self-mutilation, and suicide attempts; and

(VIII) history of truancy, fire-setting, abuse of animals, and running away.

(3) Treatment of the Developmentally Delayed.

(A) Treatment components for developmentally delayed clients are based on those used in treating non-developmentally delayed clients but are tailored to address the learning limitations and special issues compounding these clients.

(B) Treatment programs shall address the obstacles such as lack of opportunity to learn appropriate sexual behavior at an early age, high probability of past sexual victimization, social isolation, poor community acceptance of healthy sexual relationships,

and difficulty in learning complex social rules and norms relating to dating, and intimacy.

(C) Cognitive behavioral therapeutic approaches are effective when paired with the cognitive strengths and weaknesses of the client.

(D) The development of appropriate social and sexual skills is critical in reducing the client's risk to re-offend. Treatment should include concrete skill building related to social interaction and sexual behavior and sex education.

(E) Structured activities to practice social skills may be required to facilitate the client's healthy development with peers.

§810.67. Pertinent Issues to Be Addressed in Treatment (Adults and Juveniles).

Licensees shall subscribe and adhere to the following tenets:

(1) The field of sex offender assessment and treatment has evolved based on extensive research and clinical experience.

(2) Interventions are designed to assist the individual to effectively manage thoughts, feelings, attitudes, and behaviors associated with their risk to reoffend. Structured, cognitive behavioral skills-oriented treatment programs that target specific criminogenic needs appear to be the most effective approaches in reducing rates of reoffending (ATSA Standard). The following treatment components shall be addressed and are accepted as those most important to the effective treatment of sexual deviancy.

(A) Arousal Control. Control of deviant arousal, fantasies, and urges is a priority with most adult sex offenders and juveniles with sexual behavior problems. Fantasy and sexual arousal to fantasy are precursors to deviant sexual behavior. It should be assumed that most adult sex offenders and juveniles with sexual behavior problems have gained sexual pleasure from their specific form of deviance. Arousal control methods do not eliminate but only help control arousal. It is therefore necessary that clients learn to apply these techniques in everyday situations. Arousal control may require periodic "follow up" sessions for the remainder of the client's life. Effective arousal control shall also include methods to control spontaneous deviant fantasies and to minimize contact with stimulating objects or persons. Arousal control should proceed from the most effective methods for reducing arousal to less effective methods. To document changes in arousal control, physiological measurement is essential. Multiple measurements over time are required to determine change reliability.

(B) Cognitive Behavioral Treatment. Cognitive distortions are thoughts and attitudes that allow offenders to justify, rationalize, and minimize the impact of their deviant behavior. Cognitive distortions allow the adult sex offender and juveniles with sexual behavior problems to overcome prohibitions and progress from fantasy to behavior. These distorted thoughts provide the adult sex offender and juveniles with sexual behavior problems with an excuse to engage in deviant sexual behavior, and serve to reduce guilt and responsibility. Cognitive behavioral treatment strives to identify, assess, and modify cognitions that promote sexual deviance and is considered a vital component of treatment.

(C) Offense Cycle/Relapse Prevention. Current knowledge of deviant sexual behavior suggests that there is a cycle of behaviors, emotions, and cognitions that is identifiable and which precede deviant sexual behavior in a predictable manner. The ability to accurately identify these maladaptive behaviors is a primary goal for every adult sex offender and juvenile with sexual behavior problems in treatment. Autobiographies, sexual history polygraphs, offense reports, interviews and cognitive-behavioral chains shall be used to identify antecedents to offending. The ability to intervene can be enhanced by training primary partners and other support persons to recognize maladaptive behaviors and to encourage application of proper coping behaviors. In addition, treatment shall include a formal multi-level relapse prevention plan.

(D) Victim Empathy. Although there is no clear evidence to suggest that all sex offenders can gain true empathy for victims of abuse, a universal goal of treatment is to learn to understand and value others. Highlighting the consequences of victimization helps sensitize the offender to the harm he or she has done. Empathy is comprised of cognitive and emotional aspects and both components may need to be addressed (ATSA Standard). The use of analogous experiences has been shown to be effective especially with juveniles. Secondary victims are relatives or other persons closely involved with the primary victim and client, who are severely impacted emotionally or physically by the trauma suffered by the victim.

(E) Biomedical Approaches. Intervention with psychopharmacological agents is useful in select cases. Antiandrogens such as medrozyprogesterone acetate, gonadotropin releasing agonist and/or antagonist, or cyproterone acetate act by reducing testosterone levels and may be helpful in controlling arousal and libido when these factors are undermining progress in treatment or increasing the risk of re-offending before significant progress can be made in the cognitive aspects of treatment. Antidepressants and medications targeting obsessive-compulsive symptoms are also useful in some individuals where those symptoms play a role in the overall psychodynamic picture. Likely candidates for biomedical intervention are those clients who are predatory, violent, have had prior treatment failures, and report an inability to control deviant sexual arousal. Use of these agents shall never be the only method of treatment. Physical or chemical castration shall be utilized only as an adjunct to treatment and not in lieu of treatment.

(F) Increasing Social Competence. Many adult sex offenders and juveniles with sexual behavior problems are poor problem-solvers, lack assertiveness, lack the ability to develop and sustain reciprocal friendships, and do not adequately manage anger or stress. They may lack the ability to develop and sustain reciprocal friendships. One goal of treatment is to improve the clients' ability to deal effectively with social situations and develop meaningful relationships with others.

(G) Improving Primary Relationships. Failure to develop and maintain a reciprocal, living relationship with an appropriate partner or healthy functional family may lead one to seek out alternative sexual outlets. With adults identifying specific sexual dysfunctions, sex therapy, and training in dating skills may be necessary to develop a functional lifestyle. Failure to involve the current partners or family members in treatment may lead to the same stresses that precipitated the sexual deviancy. With juveniles identifying sex education deficits and training in appropriate dating and relationship skills are essential to the development of a functional lifestyle.

(H) Couples/Family Therapy. To facilitate transition of the client's partner and or family into therapy a variety of treatment modalities are recommended. Individual, couple, family, and sibling therapy, non-offending spouses groups, and/or parents or legal guardians of victims' groups prepare the partner and family for the issues and methods involved in sex offender treatment. If an adult sex offender or juvenile is to eventually live in a home where survivors or children reside, a predetermined integration sequence shall be followed which addresses role and boundary issues. This shall include close supervision and a variety of safeguards for the protection of children.

(I) Support Systems. Involvement of close friends and family in therapy provides the offender with a milieu in which sup-

port is available. Part of the transition to follow-up is a reduction in group and in individual treatment. To compensate for this loss of support and surveillance, the support system should assist the adult sex offender and juvenile in avoiding and coping with antecedents to sexual deviance. The support system shall include individuals from the adult sex offender and juvenile's daily life (for example: family, friends, co-workers, church members, and extended family).

(J) Adjunct Treatments: Individual cognitive behavioral therapy, substance abuse, anger management, stress management, social skills, or self-help groups shall only be used as adjuncts to a comprehensive treatment program in reducing the client's risk to re-offend.

(K) Co-morbid Diagnosis. In some adult sex offenders and juveniles with sexual behavior problems there are sufficient signs and symptoms to merit an additional diagnosis by DSM IV-TR criteria. These diagnoses can be anywhere in the entire spectrum of psychiatric disorder. The most common are alcohol abuse, substance abuse and affective disorders. Treating an alcohol or substance problem should not be assumed to make sex offender treatment unnecessary. Occasionally, the delusions and hallucinations of schizophrenia will be associated with the individual committing sexual offenses. The co-morbid diagnosis shall be treated with the appropriate therapies concomitantly with the treatment for sex offending behavior except in the case of schizophrenia where the anti-psychotic therapy would take precedence.

(L) After-Care Treatment. A therapeutic regimen that includes after-care treatment significantly increases the likelihood that gains made during treatment will be maintained. In order for new habits and skills to be reinforced and to monitor compliance with treatment contracts, after-care treatment shall involve periodic "follow up" sessions to reinforce and assess maintenance of positive gains made during treatment. This can be facilitated by involving the treatment group, supervision personnel, support system, the use of polygraphs, and phallometric assessment. Information from these sources may serve to deter future offenses or alert therapists to problems.

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

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SUBCHAPTER D. CODE OF PROFESSIONAL ETHICS

22 TAC §810.91, §810.92

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

§810.91. General.
§810.92. Code of Ethics.

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

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22 TAC §810.91, §810.92

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.91. General.

Licensees shall be trained in the assessment and treatment of adult sex offenders and/or juveniles with sexual behavior problems. Licensees shall constitute a professional discipline which shall have a membership committed to establishing and maintaining the highest level of professional standards related to the assessment and treatment of these clients. As such, licensees shall be conscious of their special skills and aware of their professional boundaries. Licensees shall perform their professional duties with the highest level of integrity and appropriate confidentiality within the scope of their statutory responsibilities. Licensees shall not hesitate to seek assistance from other professional disciplines when circumstances dictate a need to do so.Licensees shall be committed to protect the public against and shall not hesitate to expose unethical, incompetent, or dishonorable practices. In order to maintain the highest standard of service and consumer protection, licensees shall commit themselves to the following principles designed to earn the greatest level of public confidence.

§810.92. Code Of Ethics.

(a) Professional Conduct.

(1) Each licensee shall provide professional service to anyone, regardless of race, religion, sex, political affiliation, social or economic status, or choice of life style. A licensee shall not allow personal feelings related to a client's alleged or actual crimes or behavior to interfere with professional judgment and objectivity. When a licensee cannot offer services to a client for any reason, the licensee shall make a proper referral. Licensees are encouraged to devote a portion of their time to work for which there is little or no financial return.

(2) Each licensee shall refrain from using his or her professional relationship, related to the assessment or treatment of a client, to

further personal, religious, political or economic interests, other than customary professional fees.

(3) The proper conduct of each licensee is a personal matter to the same degree as it is with any other individual, except when such conduct compromises the fulfillment of professional responsibilities or reduces the public trust in this specialty area. Consequently, licensees shall be sensitive to predominant community standards and the potential impact that either conformity to, or deviation from these standards can have on the perception of their own performance, as well as that of their colleagues.

(4) Each licensee shall have an obligation to engage in continuing education and professional growth.

(5) Each licensee shall refrain from diagnosing, treating or advising on problems outside of the recognized boundaries of his/her competence.

(b) Client Relationships.

(1) Each licensee, shall offer dignified and reasonable support to a client, and shall not exaggerate the efficacy of treatment services.

(2) Each licensee shall recognize the importance pertaining to financial matters with clientele. Arrangements for payments should be settled at the beginning of an assessment or a therapeutic relationship.

(3) Each licensee shall not engage in dual relationships with clients. These relationships impair professional judgment or pose a risk of exploiting the client. Examples of dual relationships include, but are not limited to, the following: treatment of family members, close friends, employees, supervisors, supervisees, personal contacts outside the scope of treatment, and relationships outside of treatment such as business or social.

(4) Licensees shall not engage in sexual harassment or intimacy with clients or former clients. Sexual behavior between a licensee and a client constitutes a felony offense in Texas. A licensee shall not engage in a sexual or intimate relationship with any client who is receiving or has received professional services, regardless of whether payment for the services was involved. Licensees shall not engage in sexual intimacy with a client's or former client's family members.

(5) A licensee shall not withdraw services to clients in a precipitous manner. Each licensee shall give careful consideration to all factors in the situation and take care to minimize possible adverse effects on the client.

(6) Each licensee who anticipates termination or disruption of service to clients shall notify the clients promptly and provide for transfer, referral, or continuation of service in keeping with the clients needs and preferences.

(7) A licensee shall terminate a professional counseling relationship when it is reasonably clear that the client is not benefiting from the relationship. When professional counseling is still indicated, the licensee shall take reasonable steps to facilitate the transfer to an appropriate referral or source. All clients on supervision shall be referred back to the criminal justice department.

(8) Each licensee who serves the clients of a colleague during a temporary absence or emergency shall serve those clients with the same consideration of that afforded any client.

(9) In their professional role, licensees shall not engage in any action, which will violate or diminish the legal and civil rights of clients or others who may be affected by their actions.

(10) The licensee shall not give or accept a gift from a client or a relative of a client, enter into a barter for services, or borrow or lend money or items of value to clients or relatives of clients or accept payment in the form of services rendered by a client.

(11) The licensee shall not knowingly offer or provide counseling, treatment, or other professional interventions to an individual concurrently receiving sex offender treatment from another licensed sex offender treatment provider except with that provider's knowledge and approval. If a licensee learns of such concurrent counseling, treatment, or other professional interventions, the licensee shall take immediate and reasonable action to inform the other mental health service provider.

(c) Confidentiality.

(1) Licensees shall keep records on each client, storing them in such a way as to ensure their safety and confidentiality in accordance with the highest professional and legal standards including but not limited to HIPAA and the Texas Health and Safety Code, Chapter 611.

(2) Each licensee shall be responsible for informing clients of the exceptions to confidentiality. Clients shall be informed of any circumstances which may prompt an exception to the agreed upon confidentiality. In accordance with Occupations Code, §109.054, information not considered confidential includes criminal history, the discharge summary, the official offense report, progress reports, test results, victim statements, and any other information necessary for the treatment of the client.

(3) Each licensee shall make clear to the client any conflicts of interest or dual relationships, which affect the licensee's current relationship with a client.

(4) Written permission and informed consent shall be granted by the client before any data may be divulged to other parties.

(5) When responding to an inquiry for information and when a written release by the client is obtained, written and oral reports shall present data germane to the purpose of the inquiry. Every effort shall be made to avoid an undue invasion of privacy for the client or other related person.

(6) Information shall not be communicated to others without the written consent of the client unless the following circumstances occur:

(A) There exists a clear and immediate danger to a person from the client; or

(B) There is an obligation to comply with specific statutes requiring reports of suspected abuse to authorities. Each licensee shall be knowledgeable all statutes, which govern the conduct of licensee's professional practice.

(d) Assessments.

(1) Licensees shall make every effort possible to promote the client's non-offending behavior while at the same time, acting in the best interest of the client, so long as others are not placed at identifiable risk. Licensees shall guard against the misuse of assessment data. Licensees shall respect their client's right to know the results, the interpretations made, and the basis for the conclusions and recommendations drawn from such assessments. Licensees shall ensure that the assessments and reports the licensee provides are used appropriately by others as well. Reports shall be written in such a way to communicate clearly to the recipient of the report.

(2) Unless the client agrees to an exception in advance, each licensee shall respect the rights of the client to have a complete

explanation, in language which the client is able to understand, of the nature and purpose of the methodologies, and any foreseeable effects of the assessment.

(3) Each licensee shall obtain voluntary informed consent, in written form, from a client prior to conducting a physiological assessment or engaging in treatment. In cases where a question exists regarding the appropriateness of administering a test to a particular client, the licensee shall seek expert guidance from a competent medical and/or psychological authority prior to testing.

(4) In court-ordered assessments, the client shall be informed of the client's rights, including the client's right to confidentiality.

(5) The responsible use of assessment measures shall be a paramount concern of each licensee. Assessments regarding a person's degree of sexual dangerousness, suitability for treatment, or other forensic referral questions shall not be determined solely by one assessment instrument. Rather, such data shall be properly integrated within a comprehensive assessment, the components of which are determined by a person who has specific training and expertise in making such assessments.

(6) An assessment shall not be used to confirm or deny whether an event or crime has taken place.

(7) In reporting assessment results, licensees shall indicate any reservations that may exist regarding validity or reliability because of the circumstances of the assessment or the absence of comparative norms for the person being tested. Each licensee shall ensure that assessment results and interpretations are not misunderstood or misused by others. Proper qualifications shall be made with regard to prediction and generalized ability of data issued in order to not mislead the consumer of the report.

(8) While it is ethical for a licensee to address an issue regarding the probability of a client committing certain criminal acts within a certain period of time; it is unethical for a licensee to state that an individual is not at risk to reoffend.

(9) Each licensee shall be cautious in offering predictions of criminal behavior for use in imprisoning or releasing individuals. If a licensee decides that it is appropriate to offer a prediction of criminal behavior on the basis of a thorough assessment in a given case, the licensee shall specify clearly:

(A) the acts being predicted;

(B) the estimated probability that these acts will occur during a given period of time; and

(C) the facts and data on which these empirical predictions are based.

(10) Each licensee shall be thoroughly familiar with the assessment or treatment procedures and data used by another licensee before providing any public comment or testimony pertaining to the validity, reliability, or accuracy of such information.

(11) Each licensee shall safeguard sexual arousal assessment testing and treatment materials. Each licensee shall recognize the sensitivity of this material and use it only for the purpose for which it is intended in a controlled Phallometric laboratory assessment. Licensees shall not make such materials available to persons who lack proper training and credentials, or who would misinterpret or improperly use such stimulus materials.

(12) Each licensee shall have had specific training in the administration and evaluation of any assessment tool that is utilized. Licensees shall not release assessment raw data to any person not qualified to interpret the data. Licensees shall not be bound to release an assessment to the client if the licensee believes the information would harm the client.

(e) Professional Relationships.

(1) Each licensee shall refrain from knowingly offering treatment services to a client who is in treatment with another professional without initially consulting with and receiving the approval of the professionals involved.

(2) Each licensee shall act with proper regard for the needs, special competencies, and perspectives of not only colleagues who treat sex offenders but other professionals as well.

(3) Each licensee is encouraged to affiliate with professional groups, clinics, or agencies operating in the assessment and treatment of sex offenders. Similarly, interdisciplinary contact and cooperation is encouraged.

(f) Research and Publications.

(1) Each licensee shall be obligated to protect the welfare of the licensee's research subjects. Provisions of the human subjects experimental policy shall prevail as specified by the current United States Department of Health, Education and Welfare guidelines.

(2) Each licensee shall carefully evaluate the ethical implications of possible research and has full responsibility to ensure that ethical practices are enforced in conducting such research.

(3) The practice of informed consent prevails. The research participant shall have full freedom to decline to participate in or withdraw from the research at any time without any prejudicial consequences.

(4) The research subject shall be protected from physical and mental discomfort, harm, and danger that may result from research procedures to the greatest degree possible.

(5) Publication credit shall be assigned to those who have contributed to a publication in proportion to their contribution, and in accordance with customary publication practices.

(g) Public Information and Advertising. All professional presentations to the public shall be governed by the following standards on public information and advertising.

(1) General Principles. The practice of assessment and treatment of the sex offenders exists for the public welfare. Licensees shall inform the public of the availability of services. The public should be educated as to the services available from qualified persons who engage in the assessment and treatment of sex offenders. Therefore, licensees shall have a responsibility to the public to engage in appropriate informational activities and to avoid misrepresentation or misleading statements. The selection of a licensee by a prospective client or by the court, supervision department, and/or attorney should be made on an informed basis. Advice and recommendations of third parties, such as community corrections officers, attorneys, physicians, other professionals, relatives or friends, as well as responses to restrained publicity, may be helpful. Advertisements and public communications, whether in directories, announcement cards, newspapers or on radio or television, shall be formulated to convey accurate information. Self-praising and testimonials shall be avoided. Information that may be helpful in some situations would include the following:

(A) office information such as name, including a group name and names of professional associates, address, telephone number, credit card acceptability, languages spoken and written, and office hours;

(B) only earned degrees from an accredited college or university, state licensure and/or other certification, professional certification or affiliation;

(C) description of practice, including the statement that a practice is limited to the assessment or treatment of adult sex offenders and juveniles with sexual behavior problems (if appropriate); and

(D) professional fee information.

(2) The proper motivation for community publicity by members who are engaged in the assessment and treatment of adult sex offenders and juveniles with sexual behavior problems lies in the need to inform the public of the availability of competent professionals. The public benefit derived from advertising depends upon the usefulness and accuracy of the information provided to the community to which it is directed.

(3) The regulation of public statements by licensees is rooted in the public interest. Public statements through which a licensee seeks business by use of extravagant or brash statements or appeals to fears could mislead or harm the layperson. Furthermore, public communications that would produce unrealistic expectations in particular cases and would bring about a lack of confidence in the profession would be harmful to the community. The licensee-client relationship is personal and unique and shall not be established as the result of pressures, deception or exploitation of the vulnerability of clients.

(4) The name under which a licensee conducts the licensees practice may be a factor in the selection process. Use of a name or credential, which could mislead referral sources or lay persons shall be considered improper. A licensee shall not make any representations that the licensee is a partner or associate of any agency or firm if the licensee is, in fact, not acting in that capacity (for example: a person engaged in private practice who is also employed at a state hospital should make it clear to a prospective client in private practice that he is not acting on behalf of a state hospital).

(5) In order to avoid the possibility of misleading persons with whom the licensee treats, a licensee shall be truthful in the representation of the licensee's professional background, training and status. Each licensee shall indicate any limitations in his or her practice.

(6) Licensees shall not represent their affiliation with any organization or agency in a manner, which falsely implies sponsorship or certification by that organization.

(7) Licensees shall not knowingly make a representation about the licensee's ability, background, or experience, or about that of a partner or associate, or about a fee or any other aspect of a proposed professional engagement that is false, fraudulent, misleading, or deceptive. A false, fraudulent, misleading, or deceptive statement or claim is defined as a statement or claim which:

(A) contains a material misrepresentation of fact;

(B) omits any material or statement of fact which is necessary to make the statement, in light of all circumstances, not misleading; or

(C) is intended or likely to create an unjustified expectation concerning the licensee, or treatment 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.

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SUBCHAPTER E. GENERAL PROVISIONS

22 TAC §810.122

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeal is authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed repeal affects Occupations Code, Chapter 110.

§810.122. Definitions.

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

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SUBCHAPTER E. CIVIL COMMITMENT GENERAL PROVISIONS

22 TAC §810.122

STATUTORY AUTHORITY

The proposed new section is authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed new section affects Occupations Code, Chapter 110.

§810.122. Definitions.

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

(1) Act--Health and Safety Code, Chapter 841, Civil Commitment of Sexually Violent Predators.

(2) Behavioral abnormality--A congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent

that the person becomes a menace to the health and safety of another person.

(3) Biennial examination expert--A person or persons employed by or under contract with the council to conduct a biennial examination to assess any change in the behavioral abnormality for a person committed under the Act, §841.081.

(4) Child safety zone--An area as defined in Code of Criminal Procedure, Art. 42.12, §13B, and Health and Safety Code, §841.134.

(5) Civil commitment--The civil commitment of a person adjudged to be a sexually violent predator and committed to the outpatient sexual violent predator treatment program (OSVPTP).

(6) Civil commitment case manager--A person employed by or under contract with the council to perform duties related to the supervision, coordination and monitoring of the person committed to the outpatient treatment and supervision program.

(7) Civil commitment treatment provider--A person under contract with the council to conduct assessments, provide intensive treatment, conduct treatment planning, and to assist the Civil Commitment Case Manager in supervising the sexually violent predator.

(8) Council--The Council on Sex Offender Treatment.

(9) Global Positioning Satellite (GPS) Tracking--Technology that incorporates global positioning tracking and electronic radio frequency. GPS allows the client's location to be monitored 24 hours per day, seven days per week.

(10) Interagency Case Management Team--All professionals involved in the treatment, assessment, supervision, monitoring, residential housing of the client, or other approved professionals. The case manager is the chairperson of the team.

(11) Multidisciplinary Team--Composed of members of the Council on Sex Offender Treatment (two), Texas Department of Criminal Justice (one), Texas Department of Criminal Justice-Victim Service Division (one), Texas Department Public Safety (one), and Texas Department of State Health Services-Mental Health Division (two). The team assesses whether a person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release or discharge, gives notice to the Texas Department of Criminal Justice or the Texas Department of Mental Health and Mental Retardation, and recommends the assessment of the person for a behavioral abnormality (Act, §841.022).

(12) Penile Plethysmograph--A diagnostic method to assess sexual arousal by measuring the blood flow (tumescence) to the penis during the presentation of sexual stimuli in a laboratory setting. The plethysmograph provides the identification of clients' arousal in response to sexual stimuli (audio/visual) and the evaluation of treatment efficacy.

(13) Polygraph examination (Clinical)--The employment of any instrumentation complying with the required minimum standards of the Texas Polygraph Examiner's Act. Polygraphs measure the emotional arousal that is caused by fear and anxiety. The autonomic nervous system responds to arousal with physiological reactions such as increased heart rate, depth of respiration, and sweat gland activity. There are four types of polygraphs.

(A) Instant Sexual Offense Polygraph--addresses the offense of conviction in conjunction with the official version;

(B) Sexual History Polygraph--addresses the complete sexual history of the client up to the instant offense;

(C) Maintenance Polygraph--addresses compliance with conditions of supervision and treatment; and

(D) Monitoring Polygraph--addresses if the client has committed a "new" sexual offense.

(14) Polygraph examiner--A licensed polygraph examiner who shall adhere to the Joint Polygraph Committee on Offender Testing (JPCOT) for polygraphing adult sex offenders and juveniles with sexual behavior problems.

(15) Predatory act--An act that is committed for the purpose of victimization and that is directed toward:

(A) a stranger;

(B) a person of casual acquaintance with whom no substantial relationship exists; or

(C) a person with whom a relationship has been established or promoted for the purpose of victimization.

(16) Repeat sexual offender--A person is a repeat sexually violent offender for the purposes of this chapter if the person is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses or if:

(A) the person:

(i) is convicted of a sexually violent offense, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision;

(ii) enters a plea of guilty or nolo contendere to a sexually violent offense in return for a grant of deferred adjudication;

(iii) is adjudged not guilty by reason of insanity of a sexually violent offense; or

(iv) is adjudicated by a juvenile court as having engaged in delinquent conduct constituting a sexually violent offense and is committed to the Texas Youth Commission under Family Code, §54.04(d)(3) or (m); and

(B) after the date on which under Health and Safety Code, §841.003(b) Subdivision (1), the person is convicted, receives a grant of deferred adjudication, is adjudged not guilty by reason of insanity, or is adjudicated by a juvenile court as having engaged in delinquent conduct, the person commits a sexually violent offense for which the person:

(i) is convicted, but only if the sentence for the offense is imposed; or

(ii) is adjudged not guilty by reason of insanity.

(17) Residential facility--A community residential facility, or halfway house, located in the State of Texas, and under contract with the council.

(18) Sexually violent offense:

(A) an offense under the Penal Code, §§21.11(a)(1), 22.011, or 22.021;

(B) an offense under the Penal Code, §30.04(a)(4), if the defendant committed the offense with the intent to violate or abuse the victim sexually;

(C) an offense under the Penal Code, §30.02, if the offense is punishable under subsection (d) of that section and the defendant committed the offense with the intent to commit an offense listed in subparagraphs (A) or (B) of this paragraph;

(D) an offense under Penal Code, §19.02 or §19.03, that, during the guilt or innocence phase or the punishment phase for the offense, during the adjudication or disposition of delinquent conduct constituting the offense, or subsequently during the civil commitment proceeding under Subchapter D, is determined beyond a reasonable doubt to have been based on sexually motivated conduct;

(E) an attempt, conspiracy, or solicitation, as defined by the Penal Code, Chapter 15, to commit an offense listed in subparagraphs (A), (B), (C), or (D) of this paragraph;

(F) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in subparagraphs (A), (B), (C), (D), (E) of this paragraph; or

(G) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in subparagraphs (A), (B), (C), (D), or (E) of this paragraph.

(19) Sexually violent predator (SVP)--A person as defined in the Health and Safety Code, §841.003. A person is a sexually violent predator for the purpose of this chapter if the person: is a repeat sexually violent offender; and suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence; is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses.

(20) Supervision, Treatment, and GPS Requirements--Are the requirements whereby a person agrees to participate and comply with the conditions of the Outpatient Sexually Violent Predator Treatment Program (OSVPTP).

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

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SUBCHAPTER F. CIVIL COMMITMENT

22 TAC §§810.151 - 810.153

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

§810.151. Administration of the Act.

§810.152. Civil Commitment of Sexually Violent Predators.

§810.153. Outpatient Treatment and Supervision Program.

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

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22 TAC §§810.151 - 810.153

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.151. Administration of the Act.

The Council on Sex Offender Treatment (council) is responsible for providing the appropriate and necessary treatment and supervision of a sexually violent predator (SVP). Pursuant to the Act, the council shall develop and implement policies and procedures involving standards of treatment and supervision that enhance public safety and hold the person to the highest level of accountability. The council shall hire program specialists and/or contract for the services of case managers, treatment providers, commitment review experts, global positioning tracking providers, biennial examination experts, transportation providers, and residential housing providers. The council by rule shall administer this chapter. Rules adopted by the council under this section shall be consistent with the purposes of this chapter. The council by rule shall develop standards of care and case management for persons committed under this chapter. The council shall appoint two members of the council and two alternates, to serve as a member of the Multidisciplinary Team (team) as defined in the Act, Health and Safety Code, §841.022. The council member(s) or designee(s) who serve on the team shall keep the council informed of the actions taken by the team by providing the council's Executive Director with periodic reports as required.

§810.152. Civil Commitment of Sexually Violent Predators.

In the event that a judge or jury determines that a person is a sexually violent predator (SVP), the person shall be committed by the judge to the Outpatient Sexually Violent Predator Treatment Program (OSVPTP) in accordance with a treatment and supervision plan approved by the council. Upon making a determination that a person is a SVP, the committing judge shall provide the council and the person with a copy of the civil commitment requirements for the person committed. The OSVPTP shall begin on the person's release from a secure correctional facility or discharge from a state hospital and shall continue until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence. A case manager who has been approved by the council shall coordinate the OSVPTP. The council shall provide the program specialist and/or case manager with all available documentation relating to the client including but not limited to a copy of the civil commitment requirements imposed upon the person by the committing judge.

§810.153. Outpatient Treatment and Supervision Program.

The council shall contract for the provision of an OSVPTP, which utilizes cognitive behavioral sex offender treatment and intensive supervision to attain the goal of no more victims. The OSVPTP containment model is composed of treatment orientation, assessments, and evaluations, global positioning tracking services, polygraph examinations, medication, transportation, penile plethysmograph, supervision, treatment, residential housing (if appropriate), and auditing services.

(1) Housing. The council shall provide for any necessary supervised or residential housing, including but not limited to, existing Texas community residential facilities, or halfway houses currently under contract with the council or at another location or facility approved by the Council. The supervised housing shall be approved by the council and shall be in locations around the State where the Department of Public Safety (DPS) maintains sufficient personnel who are properly trained in utilizing all forms of tracking services.

(2) Orientation. A person civilly committed by a judge, shall receive an orientation session from the assigned treatment provider involving the OSVPTP. The council shall establish policies and procedures for informing the person of his rights, obligations, and responsibilities under the OSVPTP. A person civilly committed to the OSVPTP shall sign all forms, releases and consent documents approved by the council, including but not limited to, the Treatment, Supervision, and GPS requirements which relate to said OSVPTP, and the person shall agree to strictly adhere to the terms and conditions of said requirements and other documents as required by the Court. A person, who signs the requirements and adheres to its terms and conditions, is allowed to begin the OSVPTP. If the person fails to sign the documents, the person is not permitted to begin the OSVPTP and will be subject to all legal sanctions available under the Act.

(3) Assessment. The initial stage of the OSVPTP shall begin with a formal assessment of the SVP. The initial assessment shall involve two components. First, the treatment provider shall review and validate the formal risk assessment. Second, the treatment provider shall conduct an assessment for the purpose of identifying individual needs, which shall be addressed during the OSVPTP. The individual needs as identified by the treatment provider shall be included in the person's individual treatment plan.

(4) Global Positioning Tracking Services. The council shall enter into an Interagency Agreement with the DPS, which will provide the technology and expertise to track sexually violent predators during their commitment to the OSVPTP in all counties except Tarrant/Dallas and Harris Counties. The primary focus of intensive tracking services is to ensure public safety, the highest level of client accountability, compliance with adhering to a daily activity schedule and to the requirements of the OSVPTP. Such services shall include but not be limited to monitoring global position tracking, electronic monitoring, and surveillance. All SVPs shall begin an intensive monitoring system once a judge civilly commits the person for outpatient treatment and supervision or is released from a security facility. The person shall be on the intensive global positioning tracking until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

(5) Polygraph Services. A person is mandated by the order of commitment to submit to polygraph testing. The treatment plan shall consist of clinical polygraph exams specific to sex offenders, including instant sexual offense, sexual history, maintenance and monitoring exams. The council shall only approve treatment plans, which utilize a licensed polygraph examiner who adheres to the Joint Polygraph Committee guidelines for polygraphing sex offenders.

(6) Medication. Medication may include anti-psychotic, anti-depressant, anti-anxiety, anti-obsessional, anti-androgenic and/or equivalent chemotherapy.

(7) Penile Plethysmograph. The person is mandated by the order of commitment to submit to plethysmograph testing. The plethysmograph shall be used to identify the clients who manifest excessive deviant arousal in response to stimuli depicting sexual abuse, discernment of lack of arousal to stimuli of consenting sex, minimization of distortions evident in self-report level of arousal, evaluation of treatment efficacy, and enhancement of certain forms of behavioral treatment. Licensees shall refer the client for a polygraph exam as soon as possible if the client is suspected of engaging in suppression behaviors on the PPG.

(8) Supervision. The council shall establish employment policies and procedures for the hiring of full time program specialists for Tarrant/Dallas and Harris counties and contracted case managers for other Texas counties who shall be responsible for the coordination of the treatment and supervision of the person civilly committed, and monitoring compliance with the treatment and supervision requirements for that person. The program specialist and case manager shall be required to:

(A) conduct face to face contact at the office, residence, and field visits to monitor the SVP;

(B) serve as a liaison with the sex offender therapist, global positioning tracking services; polygraph examiner, District Attorneys, residential staff, parole officer, employer, and all other professionals involved in the person's life;

(C) shall report any violation to the council within 24 hours;

(D) shall ensure the residential plan is congruent with the child safety zone laws;

(E) shall ensure the person registers with the Texas Department of Public Safety every thirty (30) days;

(F) shall make referrals for alcohol and drug testing;

(G) adjust the person's supervision according to the risk assessment;

(H) shall make timely recommendations to the judge on whether to allow the committed person to change residence or to leave the state and on any other appropriate matters shall inform the person annually of their right to file for unauthorized release;

(I) shall submit the biennial report to the Judge;

(J) shall coordinate transportation services for the person; and

(K) shall abide by the Case Manager Code of Ethics.

(9) Sex Offender Treatment. The council shall approve and contract for the provision of treatment, which is based on a cognitive behavioral model with the focus of the treatment being holistic. The OSVPTP shall include, but not be limited to, sex offender specific group and individual therapy; social skills training, medicine, and if deemed warranted by the treatment provider, substance abuse counseling or traditional mental health treatment. The treatment plan shall be composed of standard tasks, which all persons shall complete prior to moving to the next stage. In addition, individual goals shall be established based upon assessment data. A treatment plan shall include the monitoring of the person with a polygraph and penile plethysmograph. The council shall establish guidelines and policies and procedures for the hiring of contracted treatment providers who will be responsible for

developing and implementing an individual treatment plan approved by the council. All treatment plans and guidelines for standards of care are subject to the approval of the council prior to implementation.

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

Filed with the Office of the Secretary of State on December 30, 2005.

TRD-200506163
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 458-7236

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SUBCHAPTER G. CIVIL COMMITMENT CASE MANAGER AND TREATMENT PROVIDER DUTIES AND RESPONSIBILITIES

22 TAC §810.182, §810.183

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

§810.182. Civil Commitment Case Manager.

§810.183. Civil Commitment Treatment Provider.

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

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Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
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For further information, please call: (512) 458-7236

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SUBCHAPTER G. CIVIL COMMITMENT PROGRAM SPECIALIST AND/OR CASE MANAGER AND TREATMENT PROVIDER DUTIES AND RESPONSIBILITIES

22 TAC §810.182, §810.183

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.182. Civil Commitment Program Specialist and/or Case Manager.

The council shall approve and contract or employ for the services of a person to perform duties related to outpatient treatment and supervision of a person civilly committed to the Outpatient Sexually Violent Predator Treatment Program (OSVPTP). The council shall establish employment policies and procedures, which set forth duties and responsibilities, minimum qualifications, knowledge, skills, and abilities required of a person serving in such capacity. The program specialist and/or case manager shall report directly to the council through its Executive Director or designee; provide supervision to the sexually violent predator (SVP); ensure community safety by monitoring the SVP; communicate with law enforcement, treatment providers, prosecutors, and the judge having jurisdiction over the person's commitment; coordinate outpatient treatment for the SVP; periodically reviews assessments to determine the success of outpatient treatment and supervision; train residential housing staff; provide periodic reports to the council through its Executive Director or designee and to the judge having jurisdiction over the person's commitment; and make recommendations to the judge having jurisdiction over the person's commitment as to whether or not to allow the committed person to change residence, or any other appropriate matters relating to the person's civil commitment.

§810.183. Civil Commitment Treatment Provider.

The council shall approve and contract for the services of a person or persons to perform duties related to the outpatient treatment of a person civilly committed to the OSVPTP, and shall establish assessment and treatment guidelines for the Civil Commitment Treatment Providers to adhere to. The council shall establish employment policies and procedures, which set forth duties and responsibilities, minimum qualifications, knowledge, skills, and abilities required of a person or persons serving in such capacity. A treatment provider shall report directly to the council through its Executive Director or designee regarding the treatment and supervision of a person committed to the OSVPTP; shall conduct assessments; provide treatment and conduct treatment planning; provide the case manager with data that will assist in the supervision of the sexually violent predator (SVP); follow assessment and treatment guidelines and policies as established by the council; conduct assessments and on-going risk assessments; recommend increases or decreases in supervision and privileges for the SVP based upon assessments and observations; conduct group and individual counseling; conduct treatment planning and submit incident reports to the program specialist and/or case manager; liaison with the case manager and other professionals providing services to the SVP; document all services provided to the SVP; and provide status reports to the case manager regarding the person's compliance with the treatment and supervision requirements of the OSVPTP.

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

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Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
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For further information, please call: (512) 458-7236

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SUBCHAPTER H. CIVIL COMMITMENT REVIEW

22 TAC §810.211

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeal is authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed repeal affects Occupations Code, Chapter 110.

§810.211. Biennial Examination.

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

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Walter J. Meyer, M.D.
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Council on Sex Offender Treatment
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For further information, please call: (512) 458-7236

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22 TAC §810.211

STATUTORY AUTHORITY

The proposed new section is authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed new section affects Occupations Code, Chapter 110.

§810.211. Biennial Examination.

(a) A person who is civilly committed under the Act, §841.081, shall receive a biennial examination conducted by an expert. The council shall approve and contract for the services of an expert who will conduct a biennial examination of the person civilly committed as a sexually violent predator. The expert shall not be the same expert who conducted the initial examination of the person for civil commitment purposes. The expert shall produce a written report within 90 days from the date of referral or earlier if required by the court, which shall include the following:

(1) the client's name, identification number, and date of examination;

(2) client's version and official version of the instant offense;

(3) client's level of denial of the instant offense and denial of deviant arousal or intent;

(4) history of assessment utilized, method and description of testing, and analysis of test data;

(5) a background summary of the client's history regarding sexual history, social history, birth/development, family marital, education, employment, substance abuse, anger, suicide, psychiatric, and current psychiatric symptoms;

(6) current mental status based on clinical observation and diagnosis of mental illness as per the current Diagnostic and Statistical Manual;

(7) a treatment or supervision history and a description of the client's history in an outpatient program;

(8) a determination if the client's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence;

(9) the examiner's recommendation regarding the client's need for civil commitment; and

(10) expert's signature and title.

(b) The report shall also include a consideration of whether to modify a requirement imposed on the person under the Act, and whether to release the person from all of the requirements imposed on the person under the Act. The program specialist and/or case manager shall provide a report of the client's compliance or non-compliance with treatment and supervision to the judge having jurisdiction over the person's commitment, and to the council through its Executive Director or designee.

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

Filed with the Office of the Secretary of State on December 30, 2005.

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Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
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For further information, please call: (512) 458-7236

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SUBCHAPTER I. PETITION FOR RELEASE

22 TAC §810.241, §810.242

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

§810.241. Authorized Petition for Release.

§810.242. Unauthorized Petition for Release.

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

Filed with the Office of the Secretary of State on December 30, 2005.

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Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
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For further information, please call: (512) 458-7236

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22 TAC §810.241, §810.242

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.241. Authorized Petition for Release.

In the event that the program specialist and/or case manager and council determine that the committed person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence, the program specialist and/or case manager and the council shall authorize the person to petition the court for release. Prior to authorizing the person to petition the court for release, the case manager shall notify the council through its Executive Director or designee.

§810.242. Unauthorized Petition for Release.

Upon a person's commitment to the OSVPTP and on an annual basis thereafter, the program specialist and/or case manager shall provide the committed person with written notice of the committed person's right to file a petition for release which has not been authorized by the case manager. The program specialist and/or case manager shall provide a copy of the written notice to the council through its Executive Director or designee.

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

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Walter J. Meyer, M.D.
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For further information, please call: (512) 458-7236

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SUBCHAPTER J. MISCELLANEOUS PROVISIONS

22 TAC §810.271, §810.272

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

§810.271. Release and Exchange of Information.

§810.272. Effect of Certain Subsequent Convictions, Judgments, or Verdicts on the Order of Commitment.

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

Filed with the Office of the Secretary of State on December 30, 2005.

TRD-200506170
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
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For further information, please call: (512) 458-7236

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22 TAC §810.271, §810.272

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.271. Release and Exchange of Information.

In order to protect the public and to facilitate a determination of whether a person is a sexually violent predator (SVP), the council shall release information relating to the person to those entities responsible for making determinations under the Act. The council shall provide the program specialist and/or case manager with relevant information relating to the person in order to ensure public safety, and to enable the provision of supervision and treatment to a person who is a (SVP). Information relating to the supervision, treatment, criminal history, or physical or mental health of the person may be released as deemed appropriate by the council. The person's consent is not required for the release or exchange of information under the Act.

(1) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to an entity charged with making an assessment or determination under this chapter.

(2) To protect the public and to enable the provision of supervision and treatment to a person who is a sexually violent predator, any entity that possesses relevant information relating to the person

shall release the information to the program specialist and/or case manager.

(3) On the written request of any attorney for another state or for a political subdivision in another state, the Texas Department of Criminal Justice, the council, a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state shall release to the attorney any available information relating to a person that is sought in connection with an attempt to civilly commit the person as a sexually violent predator in another state.

(4) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator or to enable the provision of supervision and treatment to a person who is a sexually violent predator, the Texas Department of Criminal Justice, the council, a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state may exchange any available information relating to the person.

(5) Information subject to release or exchange under this section includes information relating to the supervision, treatment, criminal history, or physical or mental health of the person, as appropriate, regardless of whether the information is otherwise confidential and regardless of when the information was created or collected. The person's consent is not required for release or exchange of information under this section.

§810.272. Effect of Subsequent Commitment or Confinement on the Order of Commitment.

(a) The duties imposed by this chapter are suspended for the duration of any confinement of a person, or any commitment of a person to a community center, mental health facility, or state school, by governmental action.

(b) In this subsection:

(1) "Community center" means a center established under Health and Safety Code, Chapter 534, Subchapter A.

(2) "Mental health facility" has the meaning assigned by Health and Safety Code, §571.003.

(3) "State school" has the meaning assigned by Health and Safety Code, §531.002.

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

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Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 458-7236

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. TEXAS BOARD OF HEALTH

SUBCHAPTER N. HISTORICALLY UNDERUTILIZED BUSINESSES

25 TAC §1.171

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes an amendment to §1.171, concerning procedures and policies of the department relating to historically underutilized businesses (HUBs).

BACKGROUND AND PURPOSE

The amendment is necessary to ensure that the rule is current and reflects the recent consolidation of health and human service agencies.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Section 1.171 has been reviewed, and the department has determined that reasons for adopting the section continue to exist because rules on this subject are required by the Government Code, §2161.003.

SECTION-BY-SECTION SUMMARY

The agency's name is changed from the "Texas Department of Heath" to the "Department of State Health Services". The reference to the rules of the General Services Commission is updated to reflect the current name, the "Texas Building and Procurement Commission (TBPC)". Finally, TBPC adopted one additional rule and the Texas Administrative Code (TAC) reference is changed to include all rules currently adopted by TBPC regarding the HUB program.

FISCAL NOTE

Wilson Day, Bureau Chief, has determined that for each year of the first five-year period that the amendment will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Wilson Day has also determined that there are no anticipated economic costs to small businesses or micro-businesses required to comply with the section as proposed because the agency already complies with the rules established by the Texas Building and Procurement Commission. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There will be no impact on local employment.

PUBLIC BENEFIT

Wilson Day has also determined that for each year of the first five years the section is in effect the public will benefit from the adoption of the section. The public benefit anticipated as a result of enforcing the section is to prevent duplication and redundancy between department rules, policies and procedures.

REGULATORY ANALYSIS

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

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Julienne Sugarek, Special Assistant to the Chief Financial Officer, Office of Chief Financial Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, ext. 6815. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The proposed rule has been thoroughly reviewed by legal counsel for the department and has been determined to be a valid exercise of the Health and Human Services Commission's legal authority under Government Code, §531.0055(e), and the department's legal authority to implement or enforce under Health and Safety Code, Chapter 1001.

STATUTORY AUTHORITY

The proposed amendment is authorized by the Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendment affects Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§1.171. Historically Underutilized Business (HUB) Program.

In accordance with the Government Code, §2161.003, the [~~Texas~~] Department of State Health Services (department) adopts by reference the rules of the Texas Building and Procurement Commission (TBPC) [~~General Services Commission (GSC)~~] found at Title 1 Texas Administrative Code §§111.11 - 111.28 [~~111.27~~] concerning the Historically Underutilized Business (HUB) Program. For purposes of implementing the TBPC [~~GSC~~] rules at the department, references to "state agency" or "agency" shall be considered to be a reference to the department. This rule applies to the department's HUB program and to other state agencies for which the department administers the HUB program.

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 January 2, 2006.

TRD-200600001
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 458-7236

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CHAPTER 159. TERTIARY MEDICAL CARE

25 TAC §159.1

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

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §159.1, concerning the reimbursement of Tertiary Care Facilities and Level IV Trauma Facilities.

BACKGROUND AND PURPOSE

The repeal is proposed because the reimbursement program was not funded by the Texas Legislature for fiscal years 2004-2005 or fiscal years 2006-2007. Repeal of this section will align the department's rules more accurately with the General Appropriations Act (GAA).

SECTION-BY-SECTION SUMMARY

The repeal of §159.1 is proposed to align the department's rules with the GAA now that there is no funding for the program. By not funding that program, it can no longer provide reimbursement and a rule governing that program are unnecessary.

FISCAL NOTE

Wilson Day, Bureau Chief, has determined that for each year of the first five-year period that the repeal will be in effect, there will be no fiscal implications to state or local government as a result of repealing the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Wilson Day has also determined that there are no anticipated economic costs to small businesses or micro-businesses because the program has not existed since fiscal year 2003, and business practices will not be altered in order to comply with the proposed repeal of the section. There are no anticipated economic costs to persons because of the repeal. There will be no impact on local employment.

PUBLIC BENEFIT

Wilson Day has also determined that for each year of the first five years the repeal of the section is in effect, the public benefit anticipated as a result of the repeal is to prevent duplication and redundancy between department rules, policies and procedures.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Julienne Sugarek, Special Assistant to the Chief Financial Officer, Office of the Chief Financial Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, ext. 6815. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The proposed rule has been thoroughly reviewed by legal counsel for the department and has been determined to be a valid exercise of the Health and Human Services Commission's legal authority under Government Code, §531.0055(e), and the department's legal authority to implement or enforce under Health and Safety Code, Chapter 1001.

STATUTORY AUTHORITY

The proposed repeal is authorized by the Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeal affects the Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§159.1. Reimbursement to Tertiary Care Facilities and Level IV Trauma Facilities.

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 January 2, 2006.

TRD-200600002
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 458-7236

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CHAPTER 295. OCCUPATIONAL HEALTH
SUBCHAPTER H. HAZARDOUS CHEMICAL RIGHT-TO-KNOW

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §§295.181 - 295.183 and new §§295.181 - 295.183, concerning the criteria needed to comply with the Community Right-to-Know Acts.

BACKGROUND AND PURPOSE

The repeal of current rules and adoption of new rules is necessitated by substantive changes made to consolidate the Manufacturing Facility Community Right-to-Know, the Public Employer Community Right-To-Know, and the Nonmanufacturing Facilities Community Right-To-Know sections for better flow of the rules and reorganization. Duplicate verbiage has been removed and similar sections of the three sections have been combined.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 295.181 - 295.183 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Section 295.181 provides for the purpose, scope and compatibility of these rules with federal laws. It also defines exclusions to these rules for certain hazardous chemicals and other items. This section includes all definitions used in the other sections of this rule.

Section 295.182 defines the responsibilities and requirements of facility operators with the specific criteria needed to comply with the Health and Safety Code, Chapters 505 - 507.

Section 295.183 details the department's right to conduct compliance inspections and investigate complaints. This section also defines the department's administrative penalty authority and lists the registration fees.

Specific changes from the previous rules include consolidating the regulations into one set of rules for all three of the Texas Community Right-to-Know Acts (TCRAs), as opposed to the current rule structure, which provides a separate rule section for each individual act; updating agency references that resulted from the creation of the department and the functionalization of programs within the new agency; requiring electronic submission of Tier Two Chemical Inventory Reports and specifying the procedures for submitting these electronic files; amending the Complaints and Investigations sections to clarify that specific actions that interfere with agency inspections shall be considered violations of the TCRAs and the rules; and amending the Administrative Penalties sections to clarify that penalties may be assessed on a per day basis for failure to file the Tier Two Report by required deadlines.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by an interpretation of the rules that although small businesses and micro-businesses will be required to alter their business practices slightly in order to comply with the sections, the upgrade to electronic submission software is free. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing the sections will be increased safety for communities where hazardous chemicals are stored or used due to improved accessibility to chemical data and greater accuracy of mapping data. The proposed new rules are anticipated to improve consistency in reporting forms and data formats.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals and new sections do 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Michael J. Minoia, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6600 ext. 2305 or by email to michael.minoia@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

25 TAC §§295.181 - 295.183

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

STATUTORY AUTHORITY

The proposed repeals are authorized by Health and Safety Code, §§505.016, 506.017, and 507.013, which provide the former Texas Board of Health (board) with the authority to adopt necessary rules to administer and enforce Chapters 505, 506, and 507; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission, not withstanding any other law, to adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapters 505 - 507, and 1001; and Government Code, Chapter 531.

§295.181. Manufacturing Facility Community Right-to-Know.
§295.182. Public Employer Community Right-To-Know.
§295.183. Nonmanufacturing Facilities Community Right-To-Know.

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 January 2, 2006.

TRD-200600004
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 458-7236

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25 TAC §§295.181 - 295.183

STATUTORY AUTHORITY

The proposed new sections are authorized by Health and Safety Code, §§505.016, 506.017, and 507.013, which provide the former Texas Board of Health (board) with the authority to adopt necessary rules to administer and enforce Chapters 505, 506, and 507; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission, not withstanding any other law, to adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Health and Safety Code, Chapter 1001.

The proposed new sections affect the Health and Safety Code, Chapters 505 - 507, and 1001; and Government Code, Chapter 531.

§295.181. General Provisions and Definitions.

(a) Purpose. The purpose of these rules is to provide facility operators with specific criteria needed to comply with the Manufacturing Facility Community Right-to-Know Act, Health and Safety Code (HSC), Chapter 505; the Public Employer Community Right-to-Know Act, HSC, Chapter 506; and the Nonmanufacturing Facilities Community Right-to-Know Act, HSC, Chapter 507.

(b) Scope. These rules are applicable to operators of all facilities covered by HSC, Chapters 505, 506, or 507.

(c) Compatibility with Federal Laws. In order to avoid confusion among manufacturing employers, public employers, nonmanufacturing facilities, and persons living in this state, the Texas Department of State Health Services shall implement the Manufacturing Facility Community Right-To-Know Act, the Public Employer Community Right-to-Know Act, and the Nonmanufacturing Facilities Community Right-to-Know Act compatibly with the federal Emergency Planning and Community Right-To-Know Act (EPCRA), which is also known as the Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III (42 USC §11001 et seq.), and related regulations (Title 40 Code of Federal Regulations (CFR), Parts 355-370), promulgated by the United States Environmental Protection Agency (EPA).

(d) Exclusion for Certain Hazardous Chemicals. These rules do not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(e) Other Exclusions. This rule does not apply to:

(1) any hazardous waste, as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) foods, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. §1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(f) Severability. Should any section or subsection in this subchapter be found to be void for any reason, such finding shall not affect any other sections.

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

(1) 505 Act--The Manufacturing Facility Community Right-To-Know Act, Health and Safety Code, Chapter 505.

(2) 506 Act--The Public Employer Community Right-To-Know Act, Health and Safety Code, Chapter 506.

(3) 507 Act--The Nonmanufacturing Facilities Community Right-To-Know Act, Health and Safety Code, Chapter 507.

(4) Appropriate facility identifiers--A physical location identification which provides a physical street address or other location identifiers, which are sufficient for emergency planning purposes and for data management by the department.

(5) Article--a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(6) Commissioner--The Commissioner of the Department of State Health Services. The Commissioner is referred to as the "director" in the 505 Act §505.004(6), the 506 Act §506.004(6), and the 507 Act §507.004(6).

(7) Current Tier Two threshold--A quantity which is assigned to a specific hazardous chemical or extremely hazardous substance in the most recent version of Title 40 CFR, Part 370, and which determines whether a specific hazardous chemical or extremely hazardous substance must be included on the Tier Two form.

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

(9) Electronic Tier Two file--An electronic data file that contains, at a minimum, all of the information required for submission in a hard copy Tier Two form, and which provides the required Tier Two information for each individual reportable chemical. This data file must be prepared using software that has been approved by the department.

(10) EPCRA or SARA, Title III--The federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 USC, §§11001-11050, and regulations promulgated by the EPA in Title 40 CFR, Parts 355-370.

(11) EHS or extremely hazardous substance--Any substance as defined in EPCRA, §11002, or listed by the EPA in Title 40 CFR, Part 355, Appendices A and B.

(12) Facility--All buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with that person.

(13) Facility chemical list--A chemical inventory that provides information for all reportable hazardous chemicals and EHSs present at a reporting facility, and which is submitted to the department in the form of a completed electronic Tier Two file.

(14) Facility operator--The person who controls the day-to-day operations of the facility.

(15) Fire chief--The elected or paid administrative head of the fire department having jurisdiction over a facility.

(16) Headquarters facility--Either the facility itself when the facility is staffed more than 20 hours per week, or, for facilities which are staffed less than 20 hours per week, the headquarters facility is an office which is staffed full time by the facility operator and which serves as the central office for staff who are responsible for overseeing the operations of the facility.

(17) Latitude and longitude--A mapping coordinate system, designated in units of decimal degrees, which serves as a facility location description on the Tier Two form in lieu of a street address.

(18) LEPC--The Local Emergency Planning Committee, a group of individuals representing a designated emergency planning district and whose membership on the committee has been approved by the Texas State Emergency Response Commission as meeting the requirements of EPCRA, §11001.

(19) Manufacturing facilities--Facilities in Standard Industrial Classification (SIC) Codes 20-39 or North American Industrial Classification System (NAICS) Codes 31-33.

(20) Nonmanufacturing facilities--Facilities, other than those facilities operated by the state or political subdivisions of the

state, and which are classified in SIC Codes 01-19 or SIC Codes 40-99 or NAICS Codes 11-23 or NAICS Codes 42-92.

(21) North American Industrial Classification System (NAICS) Code--The six digit number which describes a facility's primary activity, which is determined by its principal product or group of products produced. The NAICS Codes were developed jointly by the U.S., Canada, and Mexico to provide comparability in statistics about business activity across North America and has replaced the U.S. Standard Industrial Classification (SIC) system. For the purposes of these rules, the NAICS Code is the one that is assigned to a facility by the Texas Workforce Commission. If a facility does not have a NAICS Code assigned by the Texas Workforce Commission, then the department must be consulted for assistance in determining the correct code.

(22) Public employer facilities--Facilities operated by the state or political subdivisions of the state. These include educational institutions such as the University of Texas.

(23) Research laboratory--A laboratory that engages in only research or quality control operations. Chemical specialty product manufacturing laboratories, full scale pilot plant operation laboratories that produces products for sale, and service laboratories are not research laboratories.

(24) Standard Industrial Classification (SIC) Code--The four digit number which describes a facility's primary activity, which is determined by its principal product or group of products produced. This code is outdated and has been replaced with the NAICS Code.

(25) Submission or required submission--The facility chemical list information which is submitted to the department in the form of an electronic Tier Two file for a single facility. When facility chemical list information for multiple facilities is submitted to the department as one electronic Tier Two file, then the electronic Tier Two file shall be counted by the department as multiple required submissions.

(26) Technically qualified individual--An individual with a professional education and background working in the research or medical fields, such as a physician, a registered nurse, or an individual holding a college bachelor's degree in science.

(27) Texas Tier Two Cover Sheet form--A form developed by the department to collect general information about each reporting facility which is submitting an electronic Tier Two file.

(28) Tier Two form--An electronic document that provides information for all reportable hazardous chemicals and EHSs present at a reporting facility. An "annual Tier Two form" provides the information for all hazardous chemicals and EHSs present at a facility at any time during the previous calendar year in quantities that met or exceeded the then current Tier Two thresholds. An "initial Tier Two form" is one that provides information for hazardous chemicals or EHSs that meet or exceed the current Tier Two thresholds, but which were not reported on a previously submitted annual Tier Two form. An "updated Tier Two form" is one that provides significant new information concerning an aspect of one or more hazardous chemicals or EHSs which were previously reported on either the annual or first time Tier Two forms submitted by a facility, and contains all the required information for hazardous chemicals or EHSs at the facility that meet or exceed the current Tier Two thresholds. A "modified Tier Two form" provides information for all hazardous chemicals and EHSs that are present at a facility at a threshold of 500 pounds; this type of report may be prepared in response to a request from a citizen for information, in lieu of the workplace chemical list.

(29) Workplace chemical list--A list of hazardous chemicals developed under Title 29 CFR, §1910.1200(e)(1)(i) or the Texas Hazard Communication Act, §502.005(a).

§295.182. Responsibilities and Requirements.

(a) Responsibility for implementation of program. The department's responsibilities under the 505 Act, the 506 Act, and the 507 Act are carried out through the Department of State Health Services, Tier Two Chemical Reporting Program. Compliance documents and routine inquiries regarding this Rule shall be addressed to the Department of State Health Services, Tier Two Chemical Reporting Program, 1100 West 49th Street, Austin, Texas 78756-3199, or at toll free telephone number 1-800-452-2791.

(b) Facility chemical list.

(1) A facility operator covered by the 505 Act, the 506 Act, or the 507 Act shall compile and maintain a facility chemical list using the most current version of the electronic Tier Two software program.

(2) Facility operators shall file an annual Tier Two form and the appropriate filing fee with the department no later than March 1 of each year.

(3) A facility operator required to submit an annual Tier Two form under paragraph (2) of this subsection shall furnish a copy of this form no later than March 1 of each year to the following entities:

(A) the appropriate fire chief; and

(B) the appropriate LEPC.

(4) A facility operator shall submit an initial Tier Two form and the appropriate filing fee to the department within 90 days after the date that the facility operator:

(A) begins operation and acquires one or more hazardous chemicals or EHSs which meet or exceed any of the current Tier Two thresholds; or

(B) first acquires one or more hazardous chemicals or EHSs which meet or exceed any of the current Tier Two thresholds and which were not reported on the most recently submitted annual Tier Two form; or

(C) determines that one or more hazardous chemicals or EHSs which meet or exceed any of the current Tier Two thresholds were omitted from the most recently submitted annual Tier Two form.

(5) A facility operator required to submit an initial Tier Two form under paragraph (4) of this subsection shall furnish a copy of this form within 90 days after the date that the facility operator first becomes subject to the requirements of paragraph (4) of this subsection to the following entities:

(A) the appropriate fire chief; and

(B) the appropriate LEPC.

(6) A facility operator shall file an updated Tier Two form with the department not later than the 90th day after the date on which the operator discovers significant new information concerning an aspect of a previously reported hazardous chemical or EHS which was reported on either an annual or initial Tier Two form submitted by the facility. No fee will be charged for filing this report.

(7) A facility operator required to submit an updated Tier Two form under paragraph (6) of this subsection shall furnish a copy of this form within 90 days after the date that the facility operator first becomes subject to the requirements of paragraph (6) of this subsection to the following entities:

(A) the appropriate fire chief; and

(B) the appropriate LEPC.

(8) A facility operator covered by this section must submit to the department an electronic Tier Two file of the facility chemical list using software and a submission procedure that has been approved by the department. A copy of the completed versions of the electronic Tier Two file, any other document required by the department, and the appropriate filing fee shall be submitted to the department to comply with this subsection.

(9) A facility operator must contact the fire chief for approval to submit an electronic Tier Two file of the facility chemical list in lieu of the printed copy of the electronic Tier Two file. If approved by the fire chief, a facility operator may submit an electronic Tier Two file of the facility chemical list and be in compliance with this subsection. A facility operator must contact the chair of the LEPC for approval to submit an electronic Tier Two file of the facility chemical list in lieu of the printed copy of the electronic Tier Two file. If approved by the LEPC chair, a facility operator may submit an electronic Tier Two file of the facility chemical list and be in compliance with this subsection.

(10) A facility operator shall maintain at the headquarters facility either an electronic file or a printed copy of the facility's current annual Tier Two form until such time as the facility operator files the following year's annual Tier Two form with the department.

(11) Multiple facilities may be reported in the same Tier Two electronic file, as long as all of the facilities are under the control of a single facility operator.

(12) In providing appropriate facility identifiers, a facility operator shall provide under the Facility Identification sections of the Texas Tier Two form one of the following descriptions:

(A) for a facility located within a city's limits, the description must provide the following information:

(i) the street address;

(ii) the name of the city; and

(iii) the zip code for the facility.

(B) for a facility located in an area outside of a city's limits, the description must include either a street address or the latitude and longitude for the facility. Latitude and longitude values shall be given in units of decimal degrees to four decimal places. Latitude and longitude values shall be obtained using a Global Positioning System instrument which has been calibrated to either the North American Datum of 1983 or the World Geodesic System of 1984.

(c) Direct citizen access to information.

(1) A manufacturing or public employer facility must provide within 10 working days of the date of receipt of a citizen's request under the 505 Act, §505.007(a), or the 506 Act, §506.007(a), a paper copy of the facility's existing workplace chemical list or a paper copy of the modified Tier Two form using a 500-pound threshold for each hazardous chemical at the facility. Except as otherwise provided in this section, such documents shall be furnished or mailed to the citizen requesting the information. The modified Tier Two form must include completed chemical description blocks for each chemical reported.

(2) A manufacturing or public employer facility that has received five requests under paragraph (1) of this subsection in a calendar month, four requests in a calendar month for two or more months in a row, or more than 10 requests in a year may elect to furnish the material to the department so the department may respond to further requests for information about hazardous chemicals at the facility.

(3) A manufacturing or public employer facility electing to furnish materials to the department must notify the department in writing, and must provide to the department copies of the previous requests which meet the request frequency rate as specified in paragraph (2) of this subsection. The facility must inform persons making requests under paragraph (1) of this subsection of the availability of the information at the department and refer the request to the department for that filing period. The notice to persons making requests shall state the address of the department and shall be mailed within seven days of the date of receipt of the request, if by mail, and at the time of the request if in person.

§295.183. Compliance and Fees.

(a) Complaints and investigations.

(1) The department has the right to inspect. The commissioner or his designated representatives may enter a facility at reasonable times to conduct compliance inspections. Advance notice is not required. It is a violation of these rules for a person to interfere with, deny, or delay an inspection or investigation conducted by a department representative.

(2) The commissioner or his designated representative shall investigate in a timely manner a complaint relating to an alleged violation of the 505 Act, the 506 Act, the 507 Act or these rules. Such complaints do not have to be submitted to the department in writing and may be anonymous. An inspection based on a complaint is not limited to the specific allegations of the complaint. A facility operator who refuses to allow such an investigation shall be in violation of these rules. Complaints are not necessary to conduct an inspection.

(3) The department may find multiple violations by a facility operator based on specific requirements of the 505 Act, the 506 Act, the 507 Act or these rules.

(4) Upon request from a representative of the commissioner, a facility operator shall make or allow photocopies of documents to be made and permit the representative to take photographs to verify the compliance status of the employer. Such requests may be made during a compliance inspection or a follow-up request after an inspection.

(b) Administrative penalties.

(1) Inspections may be conducted by the commissioner or his designated representative to determine if persons are in violation of the 505 Act, the 506 Act, the 507 Act or these rules. Persons found to be in violation will be notified in writing of any alleged violations and proposed penalties or other enforcement action.

(2) Manufacturing facility operators found to be in violation of the 505 Act or these rules are subject to administrative penalties, as authorized by the 505 Act, to be administered in accordance with the procedures detailed in the 505 Act, §§505.010, 505.011, and 505.012, and this section.

(3) Public employer facility operators found to be in violation of the 506 Act or these rules are subject to administrative penalties, as authorized by the 506 Act, to be administered in accordance with the procedures detailed in the 506 Act, §§506.010, 506.011, and 506.012, and this section.

(4) Nonmanufacturing facility operators found to be in violation of the 507 Act or these rules are subject to administrative penalties, as authorized by the 507 Act, to be administered in accordance with the procedures detailed in the 507 Act, §§507.009, 507.010, and 507.011, and this section.

(5) Each violation may be assessed as a separate penalty. The total penalty for a violation is the sum of all per day violation penalties.

(6) Penalties shall be due after an order is issued by the commissioner. An order may be issued on or after the 16th business day following the date that a written notification of violation is received by the facility operator, unless the department receives an acceptable written response that documents that each violation has been corrected, an informal conference has been requested, or a formal hearing has been requested. If an informal conference is held, the facility operator must respond as set forth in paragraph (8) of this subsection within 10 days after the facility operator receives a summary letter following the informal conference.

(7) If a violation involves a failure to make a good faith effort to comply with these rules by a manufacturing facility or a nonmanufacturing facility, the commissioner may assess the administrative penalty at any time.

(8) The written response to the department's summary letter from the facility operator must address each violation separately and must provide the documentation requested by the department or an acceptable alternative agreed to by the department. An inappropriate or unacceptable response may result in a penalty being assessed for the underlying violations.

(9) Violations will be classified in one of three severity levels:

(A) a minor violation is related to a minor records keeping deficiency;

(B) a serious violation is related to failure to pay filing fees for required submissions, minor omissions of information from Tier Two forms, or substantial records keeping deficiencies; or

(C) a critical violation is related to substantial omissions of information from Tier Two forms, failure to submit required information, or denial of entry.

(10) For manufacturing facilities, a penalty may be assessed, not to exceed $500 a day for each day a violation continues, with a total penalty not to exceed $5,000 for each violation.

(11) For public employer facilities and nonmanufacturing facilities, a penalty may be assessed, not to exceed $50 a day for each day a violation continues, with a total penalty not to exceed $1,000 for each violation.

(12) Individual penalties may be reduced or enhanced based on consideration of the history of previous violations, the degree of hazard to the health and safety of the public, good-faith efforts made to correct violations promptly, and on any other consideration that justice may require.

(13) Failure to file a Tier Two form with the department will be considered a violation that may not require an inspection. Other violations may be confirmed by the department through correspondence with authorized company officials and may not warrant an inspection.

(14) At its option, the department may accept appropriate documentation provided by the facility as evidence of compliance status.

(15) Examples of violations for the various severity levels include, but are not limited to:

(A) minor violations having a penalty of $100 per day for manufacturing facilities and $10 per day for public employer facilities and nonmanufacturing facilities:

(i) failure to sign or date Tier Two forms filed with the department;

(ii) failure to maintain a copy of an updated Tier Two form at the facility; or

(iii) failure to provide adequate chemical description information required for each hazardous chemical on the Tier Two form.

(B) serious violations having a penalty of $300 per day for manufacturing facilities and $30 per day for public employer facilities and nonmanufacturing facilities:

(i) failure to include significant information regarding reportable quantity hazardous chemicals on any Tier Two form submitted to the department, the fire chief, or the LEPC;

(ii) failure to file an initial Tier Two form with the department, the fire chief, or the LEPC, within 90 days after the date on which the operator begins operation or the facility exceeds the reporting threshold for a previously unreported hazardous chemical;

(iii) failure to submit the appropriate Tier Two form filing fee to the department;

(iv) failure to provide significant information required for the Texas Tier Two Cover Sheet; or

(v) failure to provide a map when required for submission of a Tier Two form.

(C) critical violations having a penalty of $500 per day for manufacturing facilities and $50 per day for public employer facilities and nonmanufacturing facilities:

(i) failure to include significant information related to hazardous chemicals on a Tier Two form submitted to the department, the fire chief, or the LEPC;

(ii) failure to submit a required Tier Two form to the department, the fire chief, or the LEPC;

(iii) interfering with, denying or delaying an inspection or investigation conducted by a representative of the department;

(iv) interfering with, denying or delaying an on site inspection of a facility conducted by the fire chief or the fire chief's representative;

(v) upon request from a fire chief or LEPC, failure to provide such additional information as is needed for planning purposes; or

(vi) upon request from a citizen, failure to provide within the time limits specified in §295.182(c)(1) of this title a copy of the facility's existing workplace chemical list or a modified Tier Two form using a 500-pound threshold for all hazardous chemicals at the facility.

(c) Fees.

(1) The department shall charge a fee for each required annual and initial Tier Two form. The fee must accompany the Tier Two form when submitted to the department.

(2) Annual fees for the annual and initial Tier Two forms are based on the number of hazardous chemicals present at a facility and shall be:

(A) For a manufacturing facility:

(i) $100 for each required submission having no more than 25 hazardous chemicals;

(ii) $200 for each required submission having no more than 50 hazardous chemicals;

(iii) $300 for each required submission having no more than 75 hazardous chemicals;

(iv) $400 for each required submission having no more than 100 hazardous chemicals; or

(v) $500 for each required submission having more than 100 hazardous chemicals.

(B) For a public employer facility or nonmanufacturing facility:

(i) $50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or

(ii) $100 for each required submission having more than 75 hazardous chemicals or hazardous chemical categories.

(3) For the purpose of minimizing fees, the department shall provide for consolidated filing of multiple Tier Two forms for facility operators if:

(A) each of the Tier Two forms contain fewer than 25 chemicals;

(B) each of the Tier Two forms are filed by a single operator or a single operator's authorized representative, with an identical operator's name and address on each Tier Two form in the consolidated filing;

(C) all consolidated Tier Two forms are mailed to the department in the same package; and

(D) the number of required submissions that are consolidated do not exceed the following:

(i) for manufacturing facilities, no more than two required submissions; or

(ii) for public employer facilities or nonmanufacturing facilities, no more than seven required submissions.

(4) Fees paid by mail must be paid by check or money order (cash payments are not acceptable) to the Department of State Health Services and must be addressed to: Department of State Health Services, Tier Two Chemical Reporting Program, ZZ109-180, P.O. Box 149200, Austin, Texas 78714-9200. Checks or money orders must contain the following information: "Budget ZZ109 Fund 180."

(5) No receipt will be provided for payment of fees which are mailed, but a canceled check may be considered adequate proof of payment.

(6) The department may refund a fee overpayment to a facility operator provided that:

(A) the facility operator provides, in writing, proof of payment, the date(s) on which the required submissions and fees were sent to or received by the department, the circumstances that caused the overpayment, and the reasons why it would have been considered an overpayment under the rules in force at the time of the original filing;

(B) the facility operator requests the refund in writing within 90 calendar days of the date on which the required submissions and fee were received by the department; and

(C) the facility operator pays the department a processing fee of $20 per refund.

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 January 2, 2006.

TRD-200600005
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 458-7236

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CHAPTER 460. MISCELLANEOUS

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§460.201 - 460.204 and 460.211, concerning procedures and policies of the Texas Health Care Information Council (council).

BACKGROUND AND PURPOSE

The council was abolished by Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292), §1.26. All rules of the council were transferred to the department under House Bill 2292, §1.19 on September 1, 2004. Repeal of these sections is necessary to align the department's rules more accurately with the recent consolidation of health and human service agencies. The department has other rules relating to donors and donations at 25 Texas Administrative Code (TAC), §§1.221 - 1.228 and to historically underutilized businesses (HUBs) at 25 TAC, §1.171. The department also has policies and procedures on donations and HUBs. These sections are not necessary because the issues are addressed in these other rules, policies, and procedures.

SECTION-BY-SECTION SUMMARY

The repeal of §§460.201 - 460.204 and 460.211 is necessary to prevent duplication and redundancy between the rules transferred from the council and other rules, policies, and procedures of the department on these subjects.

FISCAL NOTE

Ramdas Menon, Director, has determined that for each year of the first five years that the repeals will be in effect, there will be no fiscal implications to state or local governments as a result of repealing the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ramdas Menon has also determined that there are no anticipated economic costs to small businesses or micro-businesses because the department has other rules relating to donors, donations, and to historically underutilized businesses. These sections are not necessary because the issues are addressed in these other rules, policies, and procedures. There are no anticipated economic costs to persons required to comply with the repeals. There will be no impact on local employment.

PUBLIC BENEFIT

Ramdas Menon has also determined that for each year of the first five years the repeal of the sections is in effect, the public

benefit anticipated as a result of the repeal is to prevent duplication and redundancy between department rules, policies, and procedures.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals do 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Julienne Sugarek, Special Assistant to the Chief Financial Officer, Office of the Chief Financial Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/458-7111, ext. 6815. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The proposed rules have been thoroughly reviewed by legal counsel for the department and have been determined to be a valid exercise of the Health and Human Services Commission's legal authority under Government Code, §531.0055(e), and the department's legal authority to implement or enforce under Health and Safety Code, Chapter 1001.

SUBCHAPTER D. RULES AND PROCEDURES FOR COUNCIL OFFICERS, COUNCIL EMPLOYEES, DONORS AND DONATIONS

25 TAC §§460.201 - 460.204

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

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055; and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed repeals affect Government Code, Chapter 531 and Health and Safety Code, Chapter 1001.

§460.201. Definitions.
§460.202. Administration and Investment of Funds.
§460.203. Relationships.
§460.204. Procedure for Acceptance of Donations.

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

Filed with the Office of the Secretary of State on December 30, 2005.

TRD-200506172
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 458-7236

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SUBCHAPTER E. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

25 TAC §460.211

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

STATUTORY AUTHORITY

The proposed repeal is authorized by Government Code, §531.0055; and Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeal affects Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§460.211. Historically Underutilized Business (HUB) Program.

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

Filed with the Office of the Secretary of State on December 30, 2005.

TRD-200506173
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 458-7236

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 23. ADMINISTRATIVE PROCEDURES

34 TAC §23.5

The Teacher Retirement System of Texas (TRS) proposes amendments to §23.5, concerning nomination for appointment to the TRS Board of Trustees (Board). The proposed amended rule addresses requirements for nominating petitions and balloting. The proposed amendments to §23.5 would change the number of eligible members or retirees who must sign and provide identifying information on nominating petitions for the appointment of public school, higher education, and retiree positions on the Board. The proposed amended rule would also change the identifying information required to verify members' and retirees' names on nominating petitions. In addition, the proposed amendments would specify the option of using electronic balloting in accordance with Texas Government Code §825.002 relating to trustees appointed by the governor.

Nominating petitions are used to determine the slate of candidates for the election to select nominees for appointment by the governor to the public school, higher education, and retiree positions on the TRS Board. The number of names required on a nominating petition would change from 500 to 250 for the public school and higher education positions and from 100 to 250 for the retiree position. The change to 250 names on nominating petitions for all positions would provide consistency and efficiency in administering the petition process. Decreasing the number of names required for the public school and higher education positions would continue to ensure that viable candidates with sufficient constituent support are nominated while encouraging the qualification of additional candidates. Increasing the number required for the retiree position would likewise ensure the nomination of viable candidates with ample constituent support but would not discourage an adequate slate of nominees.

As proposed, amended §23.5 would no longer require persons signing nominating petitions to provide their full Social Security numbers. In lieu of a complete Social Security number, they would have to provide the following identifying information to verify their status as eligible members or retirees: the first five digits of the member's or retiree's current residential zip code and the last four digits of the member's or retiree's Social Security number. The proposed amended rule would also allow TRS to use a member's or retiree's identifying information on a bar code on ballots to verify a voter's identity and status during the nomination election. These changes would provide reasonable measures both to protect and to verify a signatory's identity.

After candidates for the nomination election have been settled on, the proposed amendments would provide for the option of electronic balloting, including an Internet-based method, pursuant to Government Code §825.002. Under the amended rule, voters could request a printed ballot for write-in candidates.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable implications relating to cost or revenues of state or local governments as a result of enforcing or administering the amended rule. Mr. Galaviz estimates that the cost of electronic balloting for the nominating election would be comparable to or less than the cost of conducting the election by paper ballot.

Mr. Galaviz also states that the public benefit will be to enhance protection of members' and retirees' personal information, to encourage additional viable candidates to qualify for the nominating elections, and to provide the option of convenient yet secure Internet-based balloting. There will be no measurable economic cost to persons required to comply with the amended rule. Because there will be no measurable effect on a local economy or local employment because of the proposed rule, no local employment impact statement is required under §2001.022, Government Code. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amended section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than 30 days after publication.

Statutory Authority: Government Code §825.002, which requires the Board to adopt rules for the administration of the process for determining nominations for appointment to the Board, and §825.102, which authorizes the Board to adopt rules for the transaction of business of the Board.

Cross-reference to Statute: Government Code §825.002, concerning nominations for appointment to the Board.

§23.5. Nomination for Appointment to the Board of Trustees.

(a) (No change.)

(b) Public school district members of the system who are currently employed by a public school district may have their names listed on the official ballot as candidates for nomination to a public school district position by filing an official petition bearing the signature, printed or typed name, first five digits of the member's current residential zip code, and last four digits of the member's [~~and~~] social security number of 250 [~~500~~] members of the retirement system whose most recent credited service is or was performed for a public school district. Institution of higher education members of the system who are currently employed by an institution of higher education may have their names listed on the official ballot as candidates for nomination to the institution of higher education position by filing an official petition bearing the signature, printed or typed name, first five digits of the member's current residential zip code, and last four digits of the member's [~~and~~] social security number of 250 [~~500~~] members whose most recent credited service is or was performed for an institution of higher education. Retired members may have their names listed on the official ballot as candidates for nomination to the retired member position by filing an official petition bearing the signature, printed or typed name, first five digits of the retiree's current residential zip code, and last four digits of the retiree's [~~and~~] social security number of 250 [~~at least 100~~] retirees of the system. Official petition forms shall be available from the Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. Official petitions must be filed by January 15 of the calendar year in which the election is to be held. A qualified public school district member, institution of higher education member, or retiree may sign more than one candidate's petition as long as they are eligible to vote in the election of the candidate or candidates for whom they are signing.

(c) Upon verification of petitions by the system or its designated agent, the names of qualified candidates shall be represented [~~printed~~] on the ballot. The system may designate an agent to implement and to monitor the ballot process. Balloting may be conducted by printed ballot or in combination with electronic balloting. Upon request by a qualified voter, the system or its designated agent [~~ballot~~] shall [~~also~~] provide the voter a printed ballot containing a space for write-in candidates. Voting instructions shall be mailed on or before March 15 of the year in which the election is held to the last known home address of each active member or retiree. To be counted, a printed ballot must be completed and returned to the system or its designated agent by April 30 of the year in which the election is held and in accordance with the instructions printed on the ballot. To be counted, an electronic

ballot must be completed and submitted to the system or its designated agent by April 30 of the year in which the election is held and in accordance with the instructions contained in the electronic voting format. [~~Ballots with member or retiree numbers (social security numbers) to be used for validation purposes must be received by TRS or its designated agent by April 30 of the year in which the election is held in order to be counted.~~] The executive director shall cause the ballots to be counted. Names of the candidates for each position receiving the three highest number of votes shall be certified by the executive director to the governor.

(d) - (g) (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.

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TRD-200506140
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 542-6438

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CHAPTER 25. MEMBERSHIP CREDIT
SUBCHAPTER G. PURCHASE OF CREDIT FOR OUT-OF-STATE SERVICE

34 TAC §§25.82, 25.84, 25.86

(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," Figure: 34 TAC §25.82(d)(2) is not included in the print version of the Texas Register. The Figure is available in the on-line version of the January 13, 2006, issue of the Texas Register.)

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") proposes amendments to §25.82, regarding cost of out-of-state service credit, §25.84, relating to crediting fees for out-of-state service credit, and §25.86, relating to computing average compensation.

The legislature recently amended state law relating to the calculation of the cost of out-of-state service credit. Act of May 27, 2005, 79th Legislature, Regular Session, Senate Bill 1691 ("SB 1691" or "the act"), §10, Chapter 1359 (to be codified as amendments to Texas Government Code Annotated §823.401). The legislation requires that to establish out-of-state service credit, a member must deposit the actuarial present value of the additional retirement benefits attributable to the purchase of the service credit, based on rates and tables recommended by the actuary. The legislation also provided in §57 that a member may establish the service credit at the cost established prior to the changes, if the person was a member of the system on December 31, 2005, and the out-of-state service was performed before January 1, 2006.

The proposed amendments to §25.82 preserve the previous cost provisions for the members and service to which those provisions still apply under §57 of SB 1691. The proposed amendments also establish the new actuarial cost provisions for service credit that requires the payment of actuarial cost. The proposed amendments include actuarial factor tables and an explanation of how those factors are to be used to determine the actuarial cost of the service credit. The proposed amendments also reflect the calculation of the cost for members subject to a three-year salary average and those who are subject to a five-year salary average, as provided for under SB 1691.

The proposed amendments to §25.84 modify the requirement that crediting fees for out-of-state service be credited to the state contribution account, since the calculation of actuarial cost does not include a separate crediting fee.

The proposed amendments to §25.86 modify the text relating to computation of average compensation when out-of-state credit is purchased to delete the reference to "best three years" of compensation. Under SB 1691, some TRS members are subject to a five year average. The proposed amendments also clarify the text relating to computation of average compensation.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years that proposed amendments to §§25.82, 25.84, and 25.86 will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the amended rules. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment.

For each year of the first five years that the proposal will be in effect, Mr. Galaviz has determined that the public benefit will be to provide a detailed explanation and actuarial factors for the calculation of the cost of out-of-state service credit under the new provisions of law. Any probable economic costs to persons required to comply with the amended rules as proposed is the result of the legislative enactment. There will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under Government Code, §2001.022. Any measurable impact on a local economy or local employment is the result of the legislative enactment. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amended rules.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. To be considered, written comments must be received by TRS no later than 30 days after publication of this notice.

Statutory Authority: Government Code, §825.102, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: Government Code, §823.401, which provides for the establishment of out-of-state service credit with TRS.

§25.82. Cost.

(a) For a person who was a member of TRS on December 31, 2005, and whose out-of-state service was performed before January 1, 2006, the [~~The~~] cost of establishing out-of-state service credit is 12% per year of the full annual salary rate for the first year of service in Texas which is both after the out-of-state service and after September 1, 1956. Annual salary is limited to $8,400 for years prior to September 1, 1969, and $25,000 for years after September 1969 but before September 1, 1979. For years starting on or after September 1, 1979, TRS will apply any relevant creditable compensation limitations to determine the full salary rate. [~~No limit exists for years after September 1, 1979.~~] Cost will not be based on years granted for substitute service. In addition a

crediting fee of 8.0% compounded annually of the amount of deposits due and paid shall be charged from the end of the school year in which the member was first eligible to purchase credit for such service until payment for the credit is received.

(b) For a person who does not meet the eligibility requirements of subsection (a) of this section, the cost of establishing out-of-state service credit is the actuarial cost, as determined by TRS, of the additional standard annuity retirement benefits that would be attributable to the out-of-state service credit purchased under this section.

(c) To calculate the actuarial cost for a member who is grandfathered to use a three-year salary average under §51.12 of this title (relating to Applicability of Certain Laws in Effect before September 1, 2005), TRS will use the cost factors from the Out-of-State Service Credit Tables furnished by the TRS actuary of record. Each of the tables cross-references the member's age in rows and the member's years of credited service before purchase in columns. The intersection of the member's age and service credit is the cost per $1,000 of salary. When a member's service credit exceeds the last column for years of service credit on the tables, the applicable cost factor is found at the intersection of the member's age and the last column for years of service credit. TRS will calculate the cost to purchase service credit under this section by dividing the salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the tables. The tables set forth the cost, per $1,000 of salary, to purchase from one year to fifteen years of out-of-state service credit.

(d) For the purpose of the actuarial cost calculation for a member who is grandfathered to use a three-year salary average under §51.12 of this title, the term "salary" is defined as follows:

(1) For the upper region of each table (where the factors appear above the line in italics), salary is the greater of current annual salary or the average of the member's highest three years of compensation; and

(2) For the lower region of each table (where the factors appear below the line in bold), salary is the average of the member's highest three years of compensation. A member's highest three years of compensation shall be calculated as if the member were retiring at the time service credit is purchased. The lower region of each table (where factors appear below the line in bold) reflects those age and service combinations where the purchase of service credit results in the immediate eligibility of the member for unreduced retirement benefits. Figure: 34 TAC §25.82(d)(2)

(e) For the purpose of the calculation for a member who is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (d) of this section except that a five-year salary average shall be used instead of a three-year salary average. Additionally, the cost shall be 96 percent of the cost as calculated under subsection (c) of this section when a factor in the upper region of a table is used.

(f) The purchase cost described in this section assumes a lump-sum deposit will be made. If deposits are made under an installment agreement, a non-refundable installment fee of 9% applies.

(g) Payments for out-of-state service credit shall be paid in a manner consistent with any applicable limitations of 26 U.S.C. §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made, pursuant to Internal Revenue Code §415. A member, or a beneficiary of a member if service credit is sought to be established after the death of the member, may not be permitted to purchase TRS service credit under this section if payments exceed the applicable limitations on contributions.

(h) The date of first eligibility to purchase credit for any year of out-of-state service shall be the latest of the following dates:

(1) the date the member received 5 years' credit for service in the public schools of Texas;

(2) the date state law [~~the Teacher Retirement Law~~] made the out-of-state service available for TRS service credit;

(3) the date in which the member qualified to deposit payment for each year of out-of-state service under the one for two rule in effect until March 20, 1975;

(4) the date the member completed one year of creditable service in the public schools of Texas after relevant out-of-state service.

(i) [~~(b)~~] No deposits for out-of-state service credit may be made before the member accumulates 5 years of credit for service in the public schools of Texas.

§25.84. Crediting Fees.

The crediting fees for out-of-state service credit, when applicable, will be credited to the state contribution account.

§25.86. Computing Average Compensation.

Neither compensation for out-of-state [~~Out-of-state~~] service nor the annual salary rate used to compute the cost of out-of-state service credit is [~~not~~] used in computing the [~~best three years~~] average compensation used in the determination of retirement or death benefits or for any other TRS purpose.

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

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Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER L. OTHER SPECIAL SERVICE CREDIT

34 TAC §25.161, §25.164

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") proposes amendments to §25.161, regarding work experience service credit and §25.164, relating to membership waiting period service credit.

The legislature recently amended state law relating to the salary average for the purpose of computing TRS benefits and relating to the use of installment payments to purchase TRS service credit. Act of May 27, 2005, 79th Legislature, Regular Session (2005), Senate Bill 1691 ("SB 1691" or "the act"), §12 and §32, Chapter 1359 (to be codified as amendments to Texas Government Code Annotated §824.203 and §825.410 respectively). The legislation requires that the standard service retirement annuity is an amount computed on the basis of the member's average annual compensation for the five years of service in which the member received the highest annual compensation. Prior to

amendment Government Code §824.203 specified a three year salary average, which §58 of the act retained for members who meet the criteria for grandfathering. Section 32 of the act also authorized the payment for special service credit through installment payment plans, with the exception of unused sick or personal leave service credit. Prior to amendment, Texas Government Code §825.410 included an itemized list of types of special service credit that could be paid by installments. The act at §9 also made changes to Government Code §823.006 relating to permissive service credit, and at §38 made changes to Insurance Code §1575.004, relating to the definition of retiree for the TRS-Care health benefits program.

The proposed amendments to §25.161 reflect the applicable changes made under SB 1691. The proposed amendments reflect the calculation of the cost of work experience service credit for members subject to a three year salary average as well as for those who are subject to a five year salary average, as provided for under SB 1691. The proposed amendments also require the non-refundable installment payment fee provided for in Government Code §825.410. Other changes are proposed to clarify how the tables are to be used to calculate cost when a member has more years of service credit than are shown on the tables. Other proposed amendments conform the rule to other changes made by SB 1691.

The proposed amendments to §25.164 also reflect the applicable changes made under SB 1691 as well as the termination of the membership waiting period as provided for in Government Code §822.001. The proposed amendments reflect the calculation of the cost of membership waiting period service credit for members subject to a three year salary average as well as for those who are subject to a five year salary average established by SB 1691. The proposed amendments also require the non-refundable installment payment fee provided for in Government Code §825.410. Other conforming changes are made to comply with SB 1691.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years that proposed amendments to §25.161 and §25.164 will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the amended rules. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment.

For each year of the first five years that the proposal will be in effect, Mr. Galaviz has determined that the public benefit will be to provide a revised explanation of the cost of work experience and membership waiting period service credit and otherwise conform the rules to the changes in SB 1691. Any probable economic costs to persons required to comply with the amended rules as proposed is the result of the legislative enactment. There will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under Government Code, §2001.022. Any measurable impact on a local economy or local employment is the result of the legislative enactment. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amended rules.

Comments may be submitted in writing to Ronnie Jung, Executive Director, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. To be considered, written comments must be received by TRS no later than 30 days after publication of this notice.

Statutory Authority: Government Code §825.102, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: Government Code §822.001, which provides for the membership waiting period; Government Code §823.006, which provides for limits on annual contributions for purchase of service credit; Government Code §823.404, which provides for work experience service credit; Government Code §823.406, which provides for membership waiting period service credit; Government Code §824.203, which provides for a five year salary average in the computation of a standard service retirement annuity; Government Code §825.410, which provides for payment of special service credit on an installment basis; and Insurance Code §1575.004, which defines "retiree" for the purpose of TRS-Care eligibility and describes when purchased service credit may be used to determine TRS-Care eligibility.

§25.161. Work Experience Service Credit.

(a) An eligible member may purchase one or two years of equivalent membership service credit in the Teacher Retirement System of Texas ("TRS") for eligible work experience in accordance with Government Code, §823.404 and subject to the approval of TRS and to any plan qualification requirements, including permissive service credit purchase restrictions under Government Code, §823.006 and/or the Internal Revenue Code of 1986, as amended from time to time. For the purpose of limitations on contributions under the Internal Revenue Code, the service credit authorized under Government Code, §823.404 is non-qualified permissive service credit [~~as defined in Government Code, §823.006~~]. A member is eligible to establish up to two years of equivalent membership service credit for eligible work experience if, at the time of the purchase, the member has at least five years of membership service credit in TRS.

(b) (No change.)

(c) For each year of equivalent membership service credit described in this section and approved by TRS, the eligible member must deposit the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the [~~conversion of the~~] work experience [~~into~~] service credit to be purchased under this section. Upon receipt by TRS of the required amount, the member will be credited with the additional year(s) of service credit purchased up to the maximum years of service credit allowed under Government Code, §823.404.

(d) To calculate these amounts, TRS will use the cost factors obtained from the two Service Purchase Tables furnished by the TRS actuary of record. Each of the tables cross-references [~~cross-reference~~] the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per $1,000 of salary. When a member's service credit exceeds the last column for years of service credit on the tables, [~~The cost factor remains constant after 31 years of service. Therefore, when an eligible member's service exceeds 31 years,~~] the applicable cost factor is found at the intersection of the member's age and the last column for [~~31~~] years of service. TRS will calculate the cost to purchase service under this section by dividing the salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the tables. Table 1 sets forth the cost, per $1,000 of salary, to purchase one year of service. Table 2 sets forth the cost, per $1,000 of salary, to purchase two years of service. For purposes of this calculation for a member who is grandfathered to use a three-year salary average under Section 51.12 of this title (relating to Applicability of Certain Laws in Effect before September 1, 2005), the term "salary" is defined as follows:

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

(e) For the purpose of the calculation for a member who is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (d) of this section except that a five-year salary average shall be used instead of a three-year salary average. Additionally, the cost shall be 96 percent of the cost as calculated under subsection (d) of this section when a factor in the upper region of a table is used.

(f) [~~(e)~~] The purchase cost described in subsection (d) of this section assumes a lump-sum deposit will be made. If deposits are made under an installment agreement, a non-refundable installment fee of 9% applies. [~~over a period of time as allowed by TRS, the purchase cost will be adjusted to reflect the actuarial present value of the benefits attributable to the purchased service credit.~~]

(g) [~~(f)~~] Service credit purchased under this section may [~~not~~] be used to determine eligibility for the Texas Public School Retired Employees Group Insurance Program (TRS-Care) to the extent permitted under Insurance Code, Chapter 1575 [~~per Insurance Code, Article 3.50-4, §2(10)(A)~~].

(h) [~~(g)~~] Payments for the purchase of TRS service credit for eligible work experience shall be paid in a manner consistent with any applicable limitations of 26 United States Code §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made, pursuant to Internal Revenue Code §415. A member, or a beneficiary of a member if service is sought to be established after the death of the member, may not be permitted to purchase TRS service credit for some or all years of work experience if payments exceed applicable limitations on contributions.

§25.164. Credit for Service During School Year With Membership Waiting Period.

(a) A member of the Teacher Retirement System of Texas (TRS) who was [~~is~~] subject to a membership waiting period during a period of employment that was between [~~beginning on or after~~] September 1, 2003, and August 31, 2005, pursuant to Government Code §822.001,as amended by Ch. 201, 78th Leg., R.S. 2003, may purchase one year of equivalent membership service credit in TRS in accordance with Government Code §823.406 and this section.

(b) - (e) (No change.)

(f) To calculate the amount required by this section, TRS will use the cost factors indicated on the "Waiting Period Service Credit Purchase Table" furnished by the TRS actuary of record. The table cross-references the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per $1,000 of salary. The cost factor for a participant with more years of service credit than shown on the table is the same as the factor shown for the highest number of years of service credit on the table for the participant. TRS will calculate the cost to purchase service credit under this section by dividing the salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The table sets the cost, per $1,000 of salary, to purchase one year of service credit. For the purpose of calculating the required amount for a member who is grandfathered to use a three-year salary average under §51.12 of this title (relating to Applicability of Certain Laws in Effect before September 1, 2005), the term "salary" is defined as follows:

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

(g) For the purpose of calculation for a member who is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (f) of this section except that a five-year salary average shall be used instead of a three-year salary average. Additionally, the cost shall be 96 percent of the cost as calculated under subsection (f) of this section when a factor in the upper region of the table is used.

(h) [~~(g)~~] The purchase cost described in subsection (f) of this section is based on a lump-sum deposit. If deposits are made by installment payments, the purchase cost will be adjusted to reflect a non-refundable installment fee of 9% [~~applicable fees and any additional actuarial cost resulting from the schedule of payments~~].

(i) [~~(h)~~] Service credit purchased under this section may [~~cannot~~] be used to determine eligibility for Texas Public School Retired Employees Group Health Insurance (TRS-Care) to the extent permitted under Insurance Code, Chapter 1575.

(j) [~~(i)~~] Payments for TRS service credit purchased under this section shall be paid in a manner consistent with any applicable limitations of United States Code, Title 26, §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made, pursuant to Internal Revenue Code §415. A member, or a beneficiary of a member, if service credit is sought to be established after the death of the member, may not be permitted to purchase TRS service credit under this section if payments exceed applicable limitations on contributions.

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

Filed with the Office of the Secretary of State on December 30, 2005.

TRD-200506143
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: February 12, 2006
For further information, please call: (512) 542-6438

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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 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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.4

The Health and Human Services Commission (HHSC) adopts new §353.4, Requirements of STAR and STAR+PLUS Programs Concerning Out-of-Network Providers, with changes to the proposed text as published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4396). The text of the rule will be republished.

HHSC amended Chapter 353, Medicaid Managed Care, by adding new rule §353.4 to Subchapter A. Subsection (a) of the rule identifies HHSC as the state agency with oversight for the Medicaid managed care program and confirms the responsibility of the participating managed care organizations (MCOs) to offer a provider network that meets the needs of their members. Subsection (b) outlines the steps for an appropriate referral to an out-of-network provider, use of out-of-network emergency services, and member access to other out-of-network services that may be necessary in other circumstances.

Subsection (c) describes the methodology used to determine the amount of reimbursement paid by an MCO for out-of-network services. Subsection (d) describes the timing and content of quarterly reports to HHSC from MCOs concerning out-of-network use. Subsection (e) concerns MCO member utilization of out-of-network services, including the standards by which excessive utilization will be determined and the special circumstances taken into consideration by HHSC in calculating an MCO's out-of-network utilization.

The provider complaint process is covered in subsection (f), including the timeframes for HHSC's response and for any action required from the MCO if HHSC determines that the complaint is valid. Subsection (g) describes when a corrective action plan will be required for an MCO, what the plan will require, and what actions must be taken either by HHSC or the MCO as a result of the need for a corrective action plan.

After further internal review, HHSC is making a technical correction to subsection (d), Reporting Requirements, to clarify that the report required by the rule and by the Medicaid Managed Care Organization contracts is the Out-Of-Network report in the Uniform Managed Care Manual and not the financial statistical report (FSR), another quarterly report provided by the Medicaid MCOs. HHSC also is adding subsection (h) to clarify that the requirements of this rule apply to MCO contracts in effect on or after September 1, 2006.

HHSC received comments regarding the proposed rule during the comment period from the Texas Hospital Association and Texas Health Resources. A summary of the comments and HHSC's responses follow.

Comment:

HHSC received a comment from the Texas Hospital Association (THA) regarding the proposed July 1, 2006, effective date of the rule. Citing a high number of complaints and litigation associated with this issue since 1998, THA strongly recommends that HHSC implement the rule within 30 days of adoption. In addition, THA urges HHSC to amend existing or new Medicaid managed care contracts to require the MCOs to comply with the out-of-network reimbursement rules. Texas Health Resources (THR) supported this recommendation.

Response:

HHSC acknowledges the comment received from THA and THR, but disagrees. This rule requires contract changes and new tracking, reporting, and monitoring systems for both HHSC and the MCOs. Those changes, along with the time required for implementation of new policies and procedures, affect the timeline for the rule's implementation. While the rule will be adopted effective January 22, 2006, it will apply to contracts in effect on or after September 1, 2006, to coincide with the start date of the new Medicaid MCO contracts. Subsection (h) has been added to reflect that applicability.

Comment:

HHSC received a comment from both THA and THR concerning Subsection (c)(1), Reasonable Reimbursement Methodology, related to the reimbursement rate for an out-of-network, in service area provider. Both recommend that the rate be set at 100% of the Medicaid fee schedule, rather than no less than the prevailing fee-for-service (FFS) rate, less 3%.

Response:

HHSC acknowledges the comments, but disagrees. Section 2.203 of House Bill 2292, codified in relevant part at Government Code §533.007(g) and (h), provides for HHSC's determination of a reasonable reimbursement methodology for use by the MCOs when reimbursing out-of-network providers. That section also provides for HHSC's imposing a corrective action plan on an MCO found to be in violation of that reasonable reimbursement methodology. One statutory element of such a corrective action plan is a requirement that the affected MCO pay the out-of-network provider the prevailing Medicaid FFS rate rather than paying according to the reasonable reimbursement methodology. HHSC has interpreted House Bill 2292 as directing the reasonable reimbursement methodology to be something less than the

prevailing Medicaid FFS rate. The rule as proposed includes a reasonable reimbursement methodology in accordance with HHSC's interpretation of the statute.

Comment:

HHSC received a comment from THA in support of the language in subsection (c)(2) Reasonable Reimbursement Methodology, related to out-of-network, out-of-service area providers.

Response:

HHSC agrees with the comment and appreciates the support of THA for the proposed language related to reimbursement for out-of-network, out-of-service area providers.

Comment:

HHSC received a comment concerning subsection (d), Reporting Requirements, from THA expressing concern that two reporting requirements found in a previous draft version of the rules have been eliminated. THA requests that these reporting requirements be re-instated into the final adoption of the rules.

Response:

HHSC acknowledges the comment received from THA, but disagrees. HHSC felt, after considering stakeholder input, the additional reporting requirements in the earlier draft version of the proposed rule would yield little useful information and be an unnecessary burden to the reporters. HHSC eliminated those requirements from the proposed rule as published.

Comment:

HHSC received a comment from both THA and THR concerning subsection (e)(2)(B), Out-Of-Network Usage Standards - Emergency Room Visits. Both believe that the allowance of no more than 30% of the Managed Care Organization's (MCO) emergency room (ER) visits at an out-of-network facility is too generous. They recommend that HHSC use 25% in keeping with the 25% benchmark for inpatient services found at subsection (e)(2)(A).

Response:

HHSC acknowledges THA and THR's comment, but disagrees. Out-of-network usage standards were established based upon a review of recent Medicaid MCO utilization of services. Emergency room usage is typically higher than that of the other service categories. The MCO member may not be near a network provider when the need for emergency care arises. Therefore, the standard allowance for out-of-network emergency room care was set at a greater percentage than the allowance for out-of-network inpatient services or other outpatient services.

Comment:

HHSC received comments concerning subsection (e)(2)(C), Out-Of-Network Usage Standards - Other Outpatient Services. Both THA and THR recommend that the MCO be limited to no more than 25% for "other outpatient services." They also recommend that the calculation be based on 25% of "what the MCO would have paid to the provider for 'other outpatient services' based on the Medicaid fee schedule for specialty, pediatric subspecialty and ancillary provider services."

Response:

HHSC acknowledges the comments, but disagrees. HHSC is reserving the right to establish the out-of-network usage limit as proposed because of the variety of services that are under the umbrella of "other outpatient services". The utilization benchmarks were established based upon dollars billed.

Comment:

HHSC received a comment from THA concerning subsection (e)(3)(A) and (B), Special Considerations in Calculating Out-of-Network Usage. THA expressed appreciation for the degree of thoroughness HHSC will undertake to determine out-of-network usage and network adequacy. However, they suggest in order for HHSC to reliably determine the effort the MCO made to contract, that HHSC consider information from both the MCO and facility, and not just the MCO.

Response:

HHSC appreciates the recognition of the thoroughness with which HHSC intends to examine out-of-network usage. HHSC acknowledges the comment concerning HHSC's consideration of information from the provider involved, but disagrees that any change in the proposed rule is necessary. The rule does not preclude HHSC from seeking information from sources other than the MCO to determine if the MCO has met the applicable usage standards. HHSC assures the commenter that efforts to include all relevant information will be made.

Comment:

HHSC received two comments related to subsection (f)(5)(A) related to Provider Complaints. Both THA and THR expressed appreciation for HHSC's willingness to impose a payment deadline on the MCO when it has been determined that additional reimbursement by the MCO is owed to the out-of-network provider. However, they claim that the inclusion of the language allowing the MCO 30 days from the date the claim is considered a "clean claim" is unnecessary, and recommend that it be removed.

Response:

HHSC recognizes the commencer's concerns, but disagrees. The language in the rule meets statutory requirements set out in Government Code 533.007(j) and Section 2.203 of House Bill 2292.

Comment:

HHSC received the same comment from THA and THR related to subsection (g)(2), Corrective Action Plan. They state that the Lewin Report suggested the withholding of 5 percent of all capitation funds from the MCO until the out-of-network volumes are compliant within the required standard. They also claim that a March 16, 2005, letter from Medical Care Advisory Committee Chairman Linda Ponder also asked HHSC to reconsider this corrective action and include it in the proposed rule when published. THA suggests the following language: "(E) Initiate a 5 percent withhold of all capitation funds from the MCO until such time the out-of-network volumes become compliant within the required standard for three consecutive months. Once maintained, all withheld funds will be paid to the MCO without interest." THR suggests the following language: "(E) Initiate a 5 percent withhold of all capitation funds from the MCO for that period of time the out-of-network volumes are not compliant within the required standard."

Response:

HHSC acknowledges the comment, but disagrees. The recommended change is more restrictive than the statute requires. HHSC has determined that the rule and applicable contract language contain sufficient protection for affected providers.

The new rule is adopted under the Texas Government Code, §531.033, which provides the Executive 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.

§353.4. Requirements of STAR and STAR+PLUS Programs Concerning Out-of-Network Providers.

(a) Network adequacy. The Health and Human Services Commission (HHSC) is the state agency responsible for overseeing and monitoring the Medicaid managed care program. The managed care organizations (MCOs) participating in the Medicaid managed care program must offer a network of providers that is sufficient to meet the needs of the Medicaid population who are MCO members. HHSC will monitor MCO members' access to an adequate provider network through reports from the MCOs and complaints received from providers and members. The reporting requirements are discussed in paragraph (d) of this section.

(b) MCO requirements concerning treatment of members by out-of-network providers.

(1) The MCO shall allow referral of its member(s) to an out-of-network provider, shall timely issue the proper authorization for such referral, and shall timely reimburse the out-of-network provider for authorized services provided when:

(A) Medicaid covered services are medically necessary and these services are not available through an in-network provider;

(B) A provider currently providing authorized services to the member requests authorization for such services to be provided to the member by an out-of-network provider; and

(C) The authorized services are provided within the time period specified in the MCO's authorization. If the services are not provided within the required time period, a new request for referral from the requesting provider must be submitted to the MCO prior to the provision of services.

(2) An MCO may not refuse to reimburse an out-of-network provider for emergency or post-stabilization services provided as a result of the MCO's failure to arrange for and authorize a timely transfer of a member.

(3) MCO requirements concerning emergency services.

(A) The MCO shall allow its members to be treated by any emergency services provider for emergency services and/or for services to determine if an emergency condition exists.

(B) The MCO is prohibited from requiring an authorization for emergency services or for services to determine if an emergency condition exists.

(4) MCOs may be required by contract with HHSC to allow members to obtain services from out-of-network providers in circumstances other than those described above.

(c) Reasonable Reimbursement Methodology

(1) The MCO shall reimburse an out-of-network, in area service provider no less than the prevailing Medicaid Fee-For-Service (FFS) rate less 3 percent. The Medicaid Fee-For-Service rates are defined as those rates for providers of services in the Texas Medicaid Program for which reimbursement methodologies are specified in the Texas Administrative Code (TAC) at Title 1, Part 15, Chapter 355, exclusive of the rates and payment structures in Medicaid Managed Care.

(2) The MCO shall reimburse an out-of-network, out-of-area service provider at no less than 100 percent of the Medicaid Fee-For-Service rate.

(3) In accordance with Subsections 533.005 (a)(12) and (b) of the Government Code, all post stabilization services provided to a member by an out-of-network provider must be reimbursed by the MCO at the rates for providers of services in the Texas Medicaid Program for which reimbursement methodologies are specified in the Texas Administrative Code (TAC) at Title 1, Part 15, Chapter 355 until the MCO arranges for the timely transfer of the member, as determined by the member's attending physician, to a provider in the MCO's network.

(d) Reporting requirements

(1) Each MCO that contracts with HHSC to provide health care services to members in a health care service region must submit quarterly information in its Out-of-Network quarterly report to HHSC.

(2) Each report submitted by an MCO must contain information about members enrolled in each HHSC Medicaid managed care program provided by the MCO. The report shall include the following information:

(A) The types of services provided by out-of-network providers for members of the MCO's Medicaid managed care plan.

(B) The scope of services provided by out-of-network providers to members of the MCO's Medicaid managed care plan.

(C) Total number of hospital admissions, as well as number of admissions that occur at each out-of-network hospital. Each out-of-network hospital must be identified.

(D) Total number of emergency room visits, as well as total number of emergency room visits that occur at each out-of-network hospital. Each out-of-network hospital must be identified.

(E) Total dollars billed for other outpatient services, as well as total dollars billed by out-of-network providers for other outpatient services.

(F) Any additional information required by HHSC.

(3) HHSC will determine the specific form of the report described above and will include the report form as part of the Medicaid managed care contract between HHSC and the MCOs.

(e) Utilization

(1) Upon review of the reports described in paragraph (d) of this section that are submitted to HHSC by the MCOs, HHSC may determine that an MCO exceeded maximum Out-of-Network usage standards set by HHSC for out-of-network access to health care services during the reporting period.

(2) Out-of-Network Usage Standards

(A) Inpatient Admissions: No more than 25 percent of an MCO's total hospital admissions, by service delivery area, may occur in out-of-network facilities.

(B) Emergency Room Visits: No more than 30 percent of an MCO's total emergency room visits, by service delivery area, may occur in out-of-network facilities.

(C) Other Outpatient Services: No more than 30 percent of total dollars billed to an MCO for "other outpatient services" may be billed by out-of-network providers.

(3) Special Considerations in Calculating MCO Out-of-Network Usage of Inpatient Admissions and Emergency Room Visits.

(A) In the event that an MCO exceeds the maximum Out-of-Network usage standard set by HHSC for Inpatient Admissions or Emergency Room Visits, HHSC may modify the calculation of that MCO's Out-of-Network usage for that standard if:

(i) The admissions or visits to a single out-of-network facility account for 25% or more of the MCO's admissions or visits in a reporting period; and

(ii) HHSC determines that the MCO has made all reasonable efforts to contract with that out-of-network facility as a network provider without success.

(B) In determining whether the MCO has made all reasonable efforts to contract with the single out-of-network facility described above in Subparagraph (A) of this paragraph, HHSC will consider at least the following information:

(i) How long the MCO has been trying to negotiate a contract with the out-of-network facility;

(ii) The in-network payment rates the MCO has offered to the out-of-network facility;

(iii) The other, non-financial contractual terms the MCO has offered to the out-of-network facility, particularly those relating to prior authorization and other utilization management policies and procedures;

(iv) The MCO's history with respect to claims payment timeliness, overturned claims denials, and provider complaints;

(v) The MCO's solvency status; and

(vi) The out-of-network facility's reasons for not contracting with the MCO.

(C) If the conditions described in subparagraph (A) of this paragraph are met, HHSC may modify the calculation of the MCO's Out-of-Network usage for the relevant reporting period and standard by excluding from the calculation the Inpatient Admissions or Emergency Room Visits to that single out-of-network facility.

(f) Provider Complaints.

(1) HHSC will accept provider complaints regarding reimbursement for or overuse of out-of-network providers and will conduct investigations into any such complaints.

(2) When a provider files a complaint regarding out-of-network payment, HHSC will require the relevant MCO to submit data to support its position on the adequacy of the payment to the provider. The data will include at a minimum a copy of the claim for services rendered and an explanation of the amount paid and of any amounts denied.

(3) Not later than the 60th day after HHSC receives a provider complaint, HHSC shall notify the provider who initiated the complaint of the conclusions of HHSC's investigation regarding the complaint. The notification to the complaining provider will include:

(A) A description of the corrective actions, if any, required of the MCO in order to resolve the complaint; and

(B) If applicable, a conclusion regarding the amount of reimbursement owed to an out-of-network provider.

(4) If HHSC determines through investigation that an MCO did not reimburse an out-of-network provider based on a reasonable reimbursement methodology as described within subsection (c) of this section, HHSC shall initiate a corrective action plan. Refer to subsection (g) of this section for information about the contents of the corrective action plan.

(5) If, after an investigation, HHSC determines that additional reimbursement is owed to an out-of-network provider, the MCO must:

(A) Pay the additional reimbursement owed to the out-of-network provider within 90 days from the date the complaint was received by HHSC or 30 days from the date the clean claim, or information required that makes the claim clean, is received by the MCO, whichever comes first; or,

(B) Submit a reimbursement payment plan to the out-of-network provider within 90 days from the date the complaint was received by HHSC. The reimbursement payment plan provided by the MCO must provide for the entire amount of the additional reimbursement to be paid within 120 days from the date the complaint was received by HHSC.

(6) If the MCO does not pay the entire amount of the additional reimbursement within 90 days from the date the complaint was received by HHSC, HHSC may require the MCO to pay interest on the unpaid amount. If required by HHSC, interest accrues at a rate of 18 percent simple interest per year on the unpaid amount from the 90th day after the date the complaint was received by HHSC, until the date the entire amount of the additional reimbursement is paid.

(7) HHSC will pursue any appropriate remedy authorized in the contract between the MCO and HHSC if the MCO fails to comply with a corrective action plan under subsection (g) of this section.

(g) Corrective Action Plan.

(1) A corrective action plan is required by HHSC in the following situations:

(A) The MCO exceeds a maximum standard established by HHSC for out-of-network access to health care services described in subsection (e) of this section; or

(B) The MCO does not reimburse an out-of-network provider based on a reasonable reimbursement methodology as described within subsection (c) of this section.

(2) A corrective action plan imposed by HHSC will require one of the following:

(A) Reimbursements by the MCO to out-of-network providers at rates that equal the allowable rates for the health care services as determined under Sections 32.028 and 32.0281, Human Resources Code, for all health care services provided during the period:

(i) the MCO is not in compliance with a utilization standard established by HHSC; or

(ii) the MCO is not reimbursing out-of-network providers based on a reasonable reimbursement methodology, as described in subsection (c) of this section.

(B) Initiation of an immediate freeze by HHSC on the enrollment of additional recipients in the MCO's managed care plan until HHSC determines that the provider network under the managed care plan can adequately meet the needs of the additional recipients;

(C) Education by the MCO of recipients enrolled in the managed care plan regarding the proper use of the provider network under the health care plan; or

(D) Any other actions HHSC determines are necessary to ensure that Medicaid recipients enrolled in managed care plans provided by the MCO have access to appropriate health care services and that providers are properly reimbursed by the MCO for providing medically necessary health care services to those recipients.

(h) The requirements of this rule apply to an MCO contract that is in effect on or after September 1, 2006.

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 January 2, 2006.

TRD-200600007
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 22, 2006
Proposal publication date: August 5, 2005
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.112, concerning attendant compensation rate enhancement, in its Reimbursement Rates chapter, without changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6848) and will not be republished.

The amended §355.112 makes several changes to the Attendant Compensation Rate Enhancement program. The amendment mandates that providers that fail to meet their enhancement requirements in a prior period have their enrollment in the attendant compensation rate enhancement program limited to the level they achieved in the prior period. However, a provider is permitted to present documentation supporting a higher level of enrollment if the provider believes that his or her prior period achievement does not represent his or her current attendant compensation levels. The amendment prohibits granting newly requested enhancements to providers owing funds identified for recoupment. The amendment deletes existing enrollment limitation rules.

The amendment changes the spending requirement from accrued attendant compensation revenue per unit of service divided by 1.10 to accrued attendant compensation revenue per unit of service times 0.90. The amendment eliminates the base rate for participants in all Attendant Compensation Rate Enhancement programs, except Community Based Alternatives Assisted Living/Residential Care (CBA AL/RC), and modifies the enrollment process to accommodate this change.

The amendment mandates that if a report is not received within a year of its due date, any recoupments due to nonsubmittal of the report are made permanent and the vendor hold relating to the report is released. Under the amendment, for a contract to qualify for reinvestment, HHSC Rate Analysis must have received an acceptable Attendant Compensation Report at least 30 days prior to, and the contract must be ongoing at, the time reinvestment is determined. If the provider fails to repay the amount due or fails to submit an acceptable payment plan within 60 days of notification of the recoupment, the amendment allows HHSC or its designee to collect recoupments owed by a provider from other Texas Department of Aging and Disability Services (DADS) contracts controlled by the provider.

Under the amended rule, amended Attendant Compensation Reports must be received by HHSC Rate Analysis prior to the date the provider is notified of compliance with spending requirements for the report in question. In addition, the amendment clarifies attendant compensation reporting requirements; training requirements for Attendant Compensation Report preparers; the process for calculating enhancement level add-ons; and the process for calculating reinvestment. The amendment explains that if the granting of newly requested enhancements to ongoing providers is limited during enrollment, the granting of enhancements to new providers is limited to that same level. Under the amendment, informal reviews and formal appeals relating to Attendant Compensation Reports are governed by §355.110 of this title (relating to Informal Reviews and Formal Appeals). The amendment also clarifies resulting enrollment levels and grouping statuses for contracts after contract assignments and explains that Attendant Compensation Rate Enhancement rules do not prohibit providers from compensating attendants at a level above that funded by the enhanced attendant compensation rate.

Finally, the amendment replaces references to the Texas Department of Human Services with references to DADS or HHSC or its designee, as appropriate; replaces references to Primary Home Care/Family Care with references to Primary Home Care; and replaces references to Priority 1 with references to Priority.

The amendments will increase consistency between the community care Attendant Compensation Rate Enhancement and the nursing facility Direct Care Staff Rate Enhancement. As well, the amendment pertaining to limiting providers' enrollment in the enhancement program to the level they achieved in a prior period will, in years in which no new funds are appropriated for enhanced attendant compensation rates, allow providers at the lowest enhancement levels to increase their levels and nonparticipants to become participants using funds that are made available by this limitation while allowing providers at the highest enhancement levels to keep their levels when they have met their spending requirements.

The spending requirement calculation amendment will make the calculation of the spending requirement more straightforward and give providers more flexibility in allocating limited funding between attendant compensation and other operating expenses. The amendment eliminating the participant base rate with no enhancement levels for all Attendant Compensation Rate Enhancement programs except for CBA AL/RC is adopted because participants (other than CBA AL/RC participants) are not currently paid a different base rate than nonparticipants, rather participants receive the same base rate as nonparticipants plus enhancements. The amendments pertaining to reinvestment will ensure that reinvested funds are distributed to ongoing contracts rather than to entities no longer contracted to provide care to clients. As well, these changes will ensure that reinvestment can be calculated in a timely fashion. The amendment pertaining to recouping funds owed by a provider from other DADS contracts controlled by the provider if the provider fails to repay the amount due will simplify the collection

process for delinquent recoupments. The remaining amendments will clarify and simplify the administration of the attendant compensation rate enhancement.

HHSC received positive comments regarding the proposed amendment from the Texas Association for Home Care during the comment period. As well, the Texas Association for Home Care suggested an additional rule change that was not part of the rule proposal and, therefore, not considered for purposes of this rulemaking action.

Comment: The Texas Association for Home Care proposed that the minimum level of participation for providers that wish to begin participating in the attendant compensation rate enhancement be entered at or above the level set for the Consumer Directed Services option.

Response: HHSC acknowledges receipt of this comment but will not be making changes in response to a comment on a portion of a rule to which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act.

The amendment is adopted under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Government Code §531.0055, which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

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

Filed with the Office of the Secretary of State on December 30, 2005.

TRD-200506137
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 19, 2006
Proposal publication date: October 21, 2005
For further information, please call: (512) 424-6900

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SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.503, concerning the reimbursement methodology for the Community-Based Alternatives Waiver Program, in its Reimbursement Rates chapter, without changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6860) and will not be republished.

The amended §355.503 includes the process of annually adjusting provider payment rates for the Community Based Alternatives Assisted Living/Residential Care Waiver in the reimbursement methodology for this program. The reimbursement methodology for this program states that clients will use the increase in their Supplemental Security Income (SSI) Federal Benefit Rate, which they receive January 1 each year, to increase their room-and-board payment and cover a greater share of the rate, thereby reducing the Department of Aging and Disability Services (DADS) share of the rate. In addition, the amendment states that the direct care rate component for the Community Based Alternatives Assisted Living/Residential Care Waiver is calculated into the six levels of care for clients in this program. Finally, references and citations relating to cost reporting for the Community Based Alternatives Assisted Living/Residential Care Waiver have been updated from former Department of Human Services (DHS) rules to HHSC and/or DADS rules as applicable.

HHSC did not receive any comments regarding the proposed amendment during the comment period.

The amendment is adopted under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Government Code §531.0055, which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

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

Filed with the Office of the Secretary of State on December 30, 2005.

TRD-200506138
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 19, 2006
Proposal publication date: October 21, 2005
For further information, please call: (512) 424-6900

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1 TAC §355.509

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §355.509, concerning the reimbursement methodology for Residential Care, in its Reimbursement Rates chapter, without changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6863) and will not be republished.

The amended §355.509 includes the process of annually adjusting provider payment rates for the Residential Care Program in the reimbursement methodology for this program. The reimbursement methodology for this program states that clients will use the increase in their Supplemental Security Income (SSI) Federal Benefit Rate, which they receive January 1 each year, to increase their room-and-board payment and cover a greater share of the rate, thereby reducing the Department of Aging and Disability Services (DADS) share of the rate. In addition, references and citations relating to cost reporting for the Community Based Alternatives Assisted Living/Residential Care Waiver have been updated from former Department of Human Services (DHS) rules to HHSC and/or DADS rules as applicable.

HHSC did not receive any comments regarding the proposed amendments during the comment period.

The amendments are adopted under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Government Code §531.0055, which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

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

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 394. MEDIATION AND NEGOTIATED RULEMAKING

1 TAC §§394.1 - 394.7

The Texas Health and Human Services Commission (HHSC) adopts new Chapter 394, §§394.1 - 394.7, concerning mediation and negotiated rulemaking. Sections 394.1, 394.3, 394.4, 394.6 and 394.7 are adopted with changes to the proposed text as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3949). The text of the rules will be republished. Section 394.2 and §394.5 are adopted without changes to the proposed text as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3949) and will not be republished.

The purpose of §394.1 and §394.2 is to define the terms employed in the chapter and to set forth HHSC's policy regarding mediation and negotiated rulemaking for all HHS agencies.

The purpose of §394.3 is to note that mediation is offered by the HHSC Office of Ombudsman, in contested cases, civil rights disputes and personnel actions.

The roles of the dispute resolution administrator and the various dispute resolution coordinators are outlined in §394.4 and §394.5.

The purpose of §394.6 is to clarify the mediation process, addressing issues such as confidentiality, costs, requirements of a mediation agreement and the voluntary nature of the process.

The factors to consider in deciding whether an agency should consider employing negotiated rulemaking are set forth in §394.7.

HHSC received several comments from the Texas Department of State Health Services regarding the proposed rules during the comment period:

Comment: Concerning the subject matter that may be mediated in §394.1(2), the rules should be revised to include only "disagreements in which an HHS agency has authorized use of mediation."

Response: HHSC does not agree. A primary purpose of the rules is to set forth those areas that will be subject to mediation across system agencies. This purpose corresponds to the intent of Texas Government Code, §531.0161.

Comment: Concerning the definition of "health and human services agencies" in §394.1(5), the rules should not use this expression to include HHSC because that is not how it is used in Texas Government Code, §531.001(4).

Response: HHSC does not agree. "Health and human services agencies" is defined in the rules to include HHSC as well as the other agencies in the system. This common usage is clear and understandable.

Comment: Concerning §394.4(b)(1), "regulated person" should be used in lieu of "regulated industry," giving person the usual broad definition.

Response: HHSC agrees and will adopt the comment.

Comment: Concerning §394.1(6) and (7), the definitions of Dispute Resolution Administrator and Coordinator (i.e., "DR Administrator" and "DR Coordinator") should not be abbreviated.

Response: HHSC does not agree. Abbreviations are appropriate in rules where clear and useful.

Comment: Concerning §394.6(c), the rules should be revised to say " . . . except in contested cases in which the costs will be shared equally unless agreed to otherwise by the parties" in order to clarify how costs will apportioned.

Response: HHSC agrees and will adopt the comment.

Comment: Concerning §394.6(d), the proposed language should be revised to further emphasize the need for any agreement to be adopted by the agency head or his representative.

Response: HHSC agrees and will substantively adopt the suggested language to §394.6(d), concerning mediation.

Comment: Concerning §394.7, add the following language: "The HHS agency will make the final decision regarding the use of negotiated rulemaking."

Response: HHSC agrees and will adopt the suggested language.

The new rules are adopted under the Texas Government Code §531.033, which provides the Commissioner of HHSC with broad rulemaking authority to carry out the Commissions duties.

§394.1. Definitions.

For purposes of this chapter, terms used herein have the following meaning:

(1) Mediation--is a method by which an impartial third party facilitates communication between the parties to promote reconciliation and settlement. It may include the use of early neutral evaluation in which an impartial third party first evaluates the strengths and weaknesses of each party's position in order to initiate mediation or any other form of informal assistance that facilitates the settlement of disputes.

(2) Dispute--any disagreement, complaint, contested case, or other circumstances in which the commission authorizes the use of mediation. Disputes that may result in claims under Chapter 2260 of

the Texas Government Code are conducted in accordance with the rules in Chapter 392 of this title.

(3) Impartial third party or mediator--a person who meets the qualifications and conditions under the Governmental Dispute Resolution Act (Chapter 2009 of the Texas Government Code) for impartial third parties.

(4) Commission--the Texas Health and Human Services Commission.

(5) HHS agencies--the Commission and all health and human service agencies.

(6) DR Administrator--the Commission's dispute resolution manager.

(7) DR Coordinator--the dispute resolution coordinator for an area, program or agency.

(8) Negotiated rulemaking--is a process authorized by Chapter 2008 of the Texas Government Code in which agency officials and representatives of various affected interests meet in an attempt to develop a consensus regarding proposed rules.

(9) Contested Case--as defined in Texas Government Code §2001.003.

§394.3. Circumstances in Which Mediation is Offered.

(a) An individual may request mediation through the Office of the Ombudsman in order to resolve issues related to HHS agency programs, processes, staff or facilities. Mediation should be requested through the Office of the Ombudsman when circumstances require assistance beyond the normal health and human services procedures. The Office of the Ombudsman may use informal means to facilitate settlement to disputes prior to employing formal mediation processes.

(b) Employees of HHS agencies may request mediation of grievances or other workplace conflicts.

(c) Employees of HHS agencies may request mediation of internal civil rights or administrative complaints. The Civil Rights Office may use informal means to facilitate settlement to disputes prior to referral to the formal mediation process. The Civil Rights Office will coordinate referral for formal mediation as appropriate.

(d) Either party to a contested case involving HHS agencies may request mediation.

§394.4. Dispute Resolution Administrator.

(a) The Commission will designate a Dispute Resolution Administrator to perform the following functions:

(1) coordinate the implementation of the above policy;

(2) serve as a resource for any training needed to implement mediation or negotiated rulemaking;

(3) collect data concerning the effectiveness of these procedures as implemented by the HHS agencies; and

(4) receive requests for mediation and identify impartial third parties.

(b) In the performance of these functions, the DR Administrator will be responsible for:

(1) providing information about available mediation procedures to employees, regulated persons, and other potential users;

(2) arranging for training and education necessary to foster the implementation and use of mediation and negotiated rulemaking;

(3) establishing a process to collect data on mediation and to evaluate the mediation program; and

(4) recommending policies, rules or rule amendments to implement the policy.

§394.6. Mediation Process.

(a) Request for Mediation. Any request for the use of mediation to resolve a dispute must be made in writing and submitted to the appropriate DR Coordinator or Administrator except in contested cases, where the request must be made to the administrative law judge. The request must state the nature of the dispute and the parties involved. In determining whether mediation is appropriate in a particular case, the following factors may be considered:

(1) whether there are potential outcomes and solutions that are only available through mediation;

(2) whether there is a reasonable likelihood that mediation will result in an agreement;

(3) whether a candid and confidential discussion among the parties may help resolve the dispute;

(4) whether negotiations between the parties have been unsuccessful and could be improved with the assistance of an impartial third party; or

(5) whether the use of mediation may use less resources and take less time than other available procedures.

(b) Voluntary Use of Mediation. Mediation will be employed only if all parties to the dispute agree to its use. The only exceptions are that upper management in an HHS agency may require employees to participate in the management-directed mediation of a workplace conflict when no administrative complaint or grievance has been filed, and may require a supervisor to participate in the mediation of an administrative complaint filed by an employee under his supervision.

(c) Impartial Third Parties and Costs. For each case referred for mediation, the parties must mutually agree on an impartial third party. If the parties agree to use an impartial third party who charges for mediation services, then the costs for the impartial third party will be borne by the HHS agency except in contested cases in which the costs will be shared equally unless agreed to otherwise by the parties.

(d) Agreement. All parties participating in mediation are expected to participate in good faith and with the authority to negotiate and reach an agreement, subject to final approval by the appropriate final decision maker for the participating HHS agency. The decision to reach an agreement is voluntary for all parties. The resolution of a dispute reached as a result of mediation must be in writing, signed by all parties, and is enforceable in the same manner as any other written contract once it is finally approved by the appropriate HHS agency or authorized representative. Moreover, any such agreement may be subject to disclosure pursuant to Texas Government Code §2009.054(c).

(e) Confidentiality. The confidentiality of the communications, records, and conduct in a mediation will be as provided under Texas Government Code §2009.054.

§394.7. Negotiated Rulemaking.

(a) Use of Negotiated Rulemaking. Before considering whether to propose the use of negotiated rulemaking, HHS agencies will consider whether, to a significant degree, its use would:

(1) be more likely to result in workable or reasonable regulations;

(2) offer opportunity for a creative solution to regulatory issues; or

(3) decrease the likelihood of litigation.

(b) The HHS agency will make the final decision regarding the use of negotiated rulemaking.

(c) Process. HHS agencies will follow the process set forth in Chapter 2008 of the Texas Government Code.

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

Filed with the Office of the Secretary of State on December 30, 2005.

TRD-200506151
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 19, 2006
Proposal publication date: July 8, 2005
For further information, please call: (512) 424-6900

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 146. TRAINING AND REGULATION OF PROMOTORES(AS) OR COMMUNITY HEALTH WORKERS

25 TAC §§146.1 - 146.10

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§146.1 - 146.10, concerning the regulation of training and certification of promotores or community health workers without changes to the proposed text as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3973) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The Promotor(a) or Community Health Worker Training and Certification Advisory Committee (committee) has provided advice to the Health and Human Services Commission and the department related to the review of applications and the recommendation of qualifying applicants as sponsoring institutions, training instructors or as promotores(as) or community health workers. The committee also recommends new or amended rules for the approval of the Health and Human Services Commission. This committee is a successor to, and continues many functions of the Promotora Program Development Committee mentioned in the Health and Safety Code, §48.002(a) and §48.003(a). The committee is established under the Health and Safety Code, §11.016, which allows the Health and Human Services Commission to establish advisory committees. Government Code, Chapter 2110, governs the committee concerning state agency advisory committees.

Health and Safety Code, Chapter 48, requires the department to establish a program designed to train and educate persons who act as promotoras or community health workers. This chapter also requires minimum standards for the certification of promotoras or community health workers. These rules are reasonable and necessary to accomplish this legislative mandate.

SECTION-BY-SECTION SUMMARY

Amendments cover definitions; the purpose of the advisory committee; applicability; application requirements and procedures for promotores or community health workers, instructors, and sponsoring institutions/training programs; types of certificates and applicant eligibility; standards for the approval of curricula; and continuing education requirements. Amendments also reflect the new agency name as "Department of State Health Services." The amended language clarifies the rules and improves the ability of promotores(as) or community health workers to obtain the training and certification established by Health and Safety Code, Chapter 48. Also, it improves the ability of the certification program to expedite the process of reviewing applications for certification of instructors and training programs.

COMMENTS

The department, on behalf of the commission, did not receive any public comments concerning the proposal during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services' General Counsel, Cathy Campbell, certifies that the adoption has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendments are adopted under the Health and Safety Code, Chapter 48, which requires the department to adopt rules on the establishment and operation of the training and certification for promotores or community health workers; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on December 28, 2005.

TRD-200506123
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: January 17, 2006
Proposal publication date: July 8, 2005
For further information, please call: (512) 458-7111

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES
SUBCHAPTER X. PREFERRED PROVIDER PLANS

28 TAC §3.3703

The Commissioner of Insurance adopts an amendment to §3.3703, concerning insurer contracting arrangements with preferred providers. The amendment is adopted without changes to the proposed text as published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4437).

This amendment is necessary to implement Senate Bill (SB) 50 enacted by the 79th Legislature, Regular Session. Consistent with SB 50, the amendment to §3.3703 requires that, upon request from a preferred provider, an insurer shall include a provision in the provider contract providing that the insurer or the insurer's clearinghouse may not deny or refuse to process an electronic clean claim because the claim is submitted together with or in a batch submission of claims that contains claims that are deficient.

The amendment includes the contracting requirement enacted in SB 50 and adds further language to define the term "batch submission." The definition clarifies that the reference to a batch submission is a reference to existing federally standardized transactions and provides that a batch submission is a group of electronic claims submitted for processing at the same time within a HIPAA standard ASC X12N 837 Transaction Set and identified by a batch control number. It is important that insurers avoid erroneously interpreting the language of SB 50 and the adopted amendment. The language of the statute and the adopted amendment apply not only to clean claims submitted in a batch submission with a claim that is deficient, but also to clean claims submitted "together with" claims that are deficient, regardless of whether those claims are in a batch submission. The contract requirement in SB 50 and the adopted amendment applies to more than just those clean claims submitted in a batch submission and includes groups of claims that may or may not be properly classified as a batch submission for federal standardized transactions. Therefore, in applying the contract requirement, it is incorrect for insurers simply to focus on whether claims that are submitted together are in a batch submission that meets the federal regulatory definition.

Comment: Commenters agreed with the proposed language that describes the meaning of the term "batch submission."

Agency Response: The department appreciates the supportive comment.

Comment: Though the commenters supported the rule as proposed, one commenter requested that the rule be made applicable to contracts "amended" on or after January 1, 2006. The commenter based the request on language in the statute that states that the provider may request language in the contract providing that the insurer may not refuse to process or pay an electronically submitted clean claim because the claim is submitted together with or in a batch submission with a claim that is not a clean claim.

Agency Response: The department appreciates the supportive comments. Although the department understands the commenter's desire to affect as many contracts as possible in the quickest time possible, SB 50 specifically provides that the changes in the law apply only to contracts "entered into or renewed" on or after January 1, 2006. The rule is consistent with SB 50, and it is the department's position that extending the rule to apply to contract amendments made prior to January 1, 2006 is not within the department's authority. To the extent that a contract amended after January 1, 2006 either includes the language contemplated in SB 50 or otherwise constitutes a renewal of the contract, SB 50 will apply to the contract.

For: Texas Medical Association.

For with changes: Texas Hospital Association.

Against: None.

The amendment is adopted under Insurance Code §§1301.007, 1301.0641 and 36.001. Section 1301.007 authorizes the Commissioner to adopt rules necessary to implement Insurance Code Title 8 Chapter 1301 and to ensure reasonable accessibility and availability of preferred provider benefits and basic level benefits to residents of this state. Section 1301.0641 provides that, if requested by a preferred provider, an insurer shall include a provision in the preferred provider's contract providing that the insurer or the insurer's clearinghouse may not refuse to process or pay an electronically submitted clean claim because the claim is submitted together with or in a batch submission with a claim that is deficient. 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.

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

Filed with the Office of the Secretary of State on December 30, 2005.

TRD-200506149
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: January 19, 2006
Proposal publication date: August 5, 2005
For further information, please call: (512) 463-6327

CHAPTER 9. TITLE INSURANCE
SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

The Commissioner of Insurance adopts an amendment to §9.1 that adopts by reference a change to the Texas Reverse Mortgage Endorsement, Form T-43, relating to home equity reverse mortgage loans, which the form is contained in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual). The amended section is adopted without changes to the proposed text as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7808). There is also no change to the proposed amended endorsement form that is adopted by reference.

The amendment to §9.1 updates the date of the Basic Manual to accommodate incorporation of the amended Form T-43, Texas Reverse Mortgage Endorsement. The 79th Legislature, Regular Session, adopted Senate Joint Resolution 7 proposing a constitutional amendment authorizing line-of-credit advances for liens securing a reverse mortgage on Texas homestead property. By voter approval on November 8, 2005, Section 50, Article XVI of the Texas Constitution was amended to authorize line-of-credit advances under a reverse mortgage loan. The amendment to endorsement form T-43 in the Basic Manual is necessary to facilitate the issuing of mortgagee title policies insuring home equity liens on homestead property.

The effective date of the amended section is January 20, 2006. The modification to the existing title insurance Form T-43 relating to home equity reverse mortgages refers to the correct and applicable law contained in the constitutional amendment as authorized by Texas voters and sets forth the scope and limitations of the insurance coverage of this form. The amended endorsement will facilitate title insurance companies writing title insurance coverage regarding home equity reverse mortgage lending in Texas. The department has filed a copy of the adopted amended form with the Secretary of State's Texas Register section. The adopted amended form is available from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104. To request a copy, please contact Sylvia Gutierrez at (512) 463-6327.

The department did not receive any comments on the proposal.

The amended section is adopted pursuant to the Insurance Code §2551.003, Chapter 2703, and §36.001, and Section 50, Article XVI of the Texas Constitution. Chapter 2703 authorizes and requires the Commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Section 2551.003 authorizes the Commissioner to promulgate and enforce rules prescribing underwriting standards and practices and to promulgate and enforce all other rules necessary to accomplish the purposes of Title 11, concerning regulation of title insurance. Section 36.001 of the Insurance Code 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. By voter approval on November 8, 2005, Section 50, Article XVI of the Texas Constitution was amended to provide for home equity line-of-credit advances on reverse mortgages.

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

Filed with the Office of the Secretary of State on December 29, 2005.

TRD-200506130
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: January 20, 2006
Proposal publication date: November 25, 2005
For further information, please call: (512) 463-6327

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CHAPTER 11. HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER J. PHYSICIAN AND PROVIDER CONTRACTS AND ARRANGEMENTS

28 TAC §11.901

The Commissioner of Insurance adopts an amendment to §11.901, concerning health maintenance organization (HMO) contracting arrangements with participating physicians and providers. The amendment is adopted without changes to the proposed text as published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4438).

This amendment is necessary to implement Senate Bill (SB) 50 enacted by the 79th Legislature, Regular Session. Consistent with SB 50, the amendment to §11.901 requires that, upon request from a participating physician or provider, an HMO shall include a provision in the physician's or provider's contract providing that the HMO or the HMO's clearinghouse may not deny or refuse to process an electronic clean claim because the claim is submitted together with or in a batch submission of claims that contains claims that are deficient.

The amendment includes the contracting requirement enacted in SB 50 and adds further language to define the term "batch submission." The definition clarifies that the reference to a batch submission is a reference to existing federally standardized transactions and provides that a batch submission is a group of electronic claims which are submitted for processing at the same time within a HIPAA standard ASC X12N 837 Transaction Set and identified by a batch control number. It is important that HMOs avoid erroneously interpreting the language of SB 50 and the adopted amendment. The language of the statute and the adopted amendment apply to clean claims submitted in a batch submission with a claim that is deficient but also to clean claims submitted "together with" claims that are deficient, regardless of whether those claims are in a batch submission. The contract requirement in SB 50 and the adopted amendment applies to more than just those claims submitted in a batch submission and includes groups of claims that may or may not be properly classified as a batch submission for federally standardized transactions. Therefore, in applying the contract requirement, it is incorrect for HMOs simply to focus on whether claims that are submitted together are in a batch submission that meets the federal regulatory definition.

Comment: Commenters agreed with the proposed language that describes the meaning of the term "batch submission."

Agency Response: The department appreciates the supportive comment.

Comment: Though the commenters supported the rule as proposed, one commenter requested that the rule be made applicable to contracts "amended" on or after January 1, 2006. The commenter based the request on language in the statute that states that the provider may request language in the contract providing that the insurer may not refuse to process or pay an electronically submitted clean claim because the claim is submitted together with or in a batch submission with a claim that is not a clean claim.

Agency Response: The department appreciates the supportive comments. Although the department understands the com-

menter's desire to affect the greatest number of contracts in the quickest time possible, SB 50 specifically provides that the changes in the law apply only to contracts "entered into or renewed" on or after January 1, 2006. The rule is consistent with SB 50, and it is the department's position that extending the rule to apply to contract amendments made prior to January 1, 2006 is not within the department's authority. To the extent that a contract amended after January 1, 2006 either includes the language contemplated in SB 50 or otherwise constitutes a renewal of the contract, SB 50 will apply to the contract.

For: Texas Medical Association.

For with changes: Texas Hospital Association.

Against: None.

The amendment is adopted under the Insurance Code §§843.151, 843.323 and 36.001. Section 843.151 authorizes the commissioner to adopt reasonable rules as necessary and proper to implement Insurance Code Title 6 Chapter 843. Section 843.323 provides that, if requested by a participating physician or provider, an HMO shall include a provision in the physician's or provider's contract providing that the HMO or the HMO's clearinghouse may not refuse to process or pay an electronically submitted clean claim because the claim is submitted together with or in a batch submission with a claim that is deficient. 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.

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

Filed with the Office of the Secretary of State on December 30, 2005.

TRD-200506150
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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Proposal publication date: August 5, 2005
For further information, please call: (512) 463-6327

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CHAPTER 19. AGENTS' LICENSING
SUBCHAPTER K. CONTINUING EDUCATION AND ADJUSTER PRELICENSING EDUCATION PROGRAMS

28 TAC §§19.1011, 19.1020, 19.1021

The Commissioner of Insurance adopts amendments to §19.1011 and new §19.1020, concerning continuing education credit for licensees who are active members of state and national insurance associations, and new §19.1021, concerning national flood insurance education training. Section 19.1021 is adopted with changes to correct formatting in the proposed text as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7357). Sections 19.1011 and 19.1020 are adopted without changes and will not be republished.

These amendments and new sections are necessary to implement the continuing education credits for agents who are active members of state and national insurance associations as directed by SB 265 enacted by the 79th Legislature, Regular Session; to authorize similar continuing education credits for life and health insurance counselors, insurance adjusters and public insurance adjusters; and to establish certified course requirements for course providers offering minimum flood insurance training under the federal Flood Insurance Reform Act of 2004.

Under SB 265, the Commissioner is authorized to adopt rules allowing the department to grant not more than four hours of continuing education credit to an agent who is an active member of a state or national insurance association. As required by SB 265, this adoption specifies acceptable state and national insurance associations, the number of hours of credit that agents who are active members of such associations may obtain for certain activities, and the procedure for agent members to claim credit for completing these activities. This adoption also authorizes the same continuing education credit for holders of national designation certifications. Additionally, this adoption authorizes the same continuing education credit for life and health insurance counselors, insurance adjusters, and public insurance adjusters pursuant to authority granted to the Commissioner in the applicable statutes related to continuing education for those license types.

This adoption also establishes the criteria for certified courses that course providers may develop to comply with the minimum training and education requirements established by the Federal Emergency Management Agency (FEMA) to implement the Flood Insurance Reform Act of 2004 for insurance agents who sell Standard Flood Insurance Policies issued through the National Flood Insurance Program.

Amendments to §19.1011 specify the information that state or national insurance association members or national designation certification holders are required to submit to claim credit for the continuing education hours authorized in this adoption and the procedure for claiming those continuing education credit hours. Section 19.1020 describes the associations that qualify as a state or national insurance association for the purposes of continuing education credit under SB 265, the activities for which this credit may be claimed, and the maximum number of credit hours that may be claimed. Section 19.1021 establishes the criteria for certified courses that course providers may develop for persons who intend to write or insurance agents who currently write flood insurance to comply with FEMA's minimum training and education requirements implementing the Flood Insurance Reform Act of 2004. Additionally, the numbering in §19.1021(g)(7) was revised to the required format.

The department received no comments on the proposed amended or new sections.

The amendments and new sections are adopted under the Insurance Code Chapters 4001, 4004, 4052, 4101, and 4102. Section 4004.101 authorizes the commissioner to adopt rules establishing the criteria for continuing education courses for license holders. Section 4004.0535 authorizes the commissioner by rule to allow the department to grant not more than four hours of continuing education credit to an agent who is an active member of a state or national insurance association, to adopt rules specifying the types of associations that constitute state or national insurance associations, the reasonable requirements for active participation in the association, and the manner of providing this information to the department. Section 4052.003 provides that,

except as provided in Chapter 4052, Life and Health Insurance Counselors are licensed and regulated in the same manner as agents. Section 4101.059 authorizes the commissioner to certify a continuing education program for insurance adjusters. Section 4102.109 authorizes the commissioner to prescribe continuing education course requirements for public insurance adjusters. 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.

§19.1021. Flood Insurance Education Course.

(a) Pursuant to §207 of the Flood Insurance Reform Act of 2004, the Federal Emergency Management Agency on September 1, 2005 published minimum training and education standards for persons that intend to write or currently write flood insurance (Federal Register, Vol. 70, No. 169, pp. 52117-52119). This section establishes these standards for a department-certified continuing education course.

(b) The course shall:

(1) be submitted for approval in compliance with §19.1007 of this subchapter (relating to Course Certification Submission Applications, Course Expirations, and Resubmissions);

(2) be at least three hours in length;

(3) and cover the topics listed in subsection (g) of this section.

(c) Providers may offer the course as a classroom, classroom equivalent, or self study course.

(d) The course may be taken after the department has issued a license or within 12 months preceding the license issue date.

(e) Licensees may count up to three hours towards completion of their initial continuing education requirement for successful completion of a certified flood insurance training course prior to issuance of their license. The licensee shall maintain proof of completion of the flood insurance training course prior to licensure for four years or through the second renewal of the license, whichever is longer. Upon request, the licensee shall provide the proof of course completion to the department or the department's designee.

(f) A provider-issued completion certificate in compliance with §19.1011(e) of this subchapter (relating to Requirements for Successful Completion of Continuing Education Courses) shall demonstrate proof of successful course completion.

(g) Course topics for the basic flood insurance course outline shall include:

(1) Section I - Introduction:

(A) National Flood Insurance Program (NFIP) Background;

(B) Community Participation;

(C) Emergency Program Defined;

(D) Regular Program Defined;

(E) Community Rating System;

(F) Eligible/Ineligible Buildings;

(G) Coastal Barrier Resources System and Other Protected Areas;

(H) Who Needs Flood Insurance?

(i) Mandatory Purchase of Flood Insurance in High Flood Risk Zones; and

(ii) Recommended in Moderate and Low Flood Risk Zones; and

(I) Why Flood Insurance is Better than Disaster Assistance.

(2) Section II - Flood Maps and Zone Determinations:

(A) Flood Hazard Boundary Map (FHBM);

(B) Flood Insurance Rate Map (FIRM):

(i) Pre-FIRM/Post-FIRM Defined; and

(ii) Special Flood Hazard Area Defined;

(C) Base Flood Elevation; and

(D) Zone Determination.

(3) Section III - Policies and Products Available:

(A) Dwelling Policy - Types of Buildings Covered;

(B) General Property Policy - Types of Buildings Covered;

(C) Residential Condominium Building Association (RCBAP) Policy - Types of Buildings Covered;

(D) Preferred Risk Policy - Types of Buildings Covered;

(E) Definitions:

(i) Flood;

(ii) Basement/Enclosure; and

(iii) Elevated Buildings;

(F) Damages Not Covered:

(i) Single Peril Policy; and

(ii) Mudslides vs. Mudflow;

(G) Property Covered:

(i) Basements;

(ii) Appurtenant Structure;

(iii) Loss Avoidance Measures;

(iv) Debris Removal; and

(v) Improvements and Betterments;

(H) Property and Expenses Not Covered:

(i) Decks;

(ii) Finished Items in Basements;

(iii) Property in Enclosures; and

(iv) Additional Living Expenses;

(I) Increased Cost of Compliance Coverage.

(4) Section IV - General Rules:

(A) Statutory Coverage Limits;

(B) Deductibles:

(i) Standard Deductibles; and

(ii) Apply Separately for Building and Contents;

(C) Property Value Determination for Selecting Coverage Amount;

(D) Loss Settlement:

(i) Actual Cash Value (ACV);

(ii) Replacement Cost Value (RCV); and

(iii) Co-insurance Penalty in RCBAP;

(E) Reduction and Reformation of Coverage;

(F) No Binders;

(G) One Building per Policy - No Blanket Coverage;

(H) Building and Contents Coverage Purchased Separately;

(I) Waiting Period/Effective Date of Policy;

(J) Policy Term; and

(K) Cancellations.

(5) Section V - Rating:

(A) Types of Buildings:

(i) Elevated Buildings; and

(ii) Buildings with Basements;

(B) When to Use an Elevation Certificate; and

(C) Grandfathering.

(6) Section VI - Claims Handling Process:

(A) Helping Your Client to File a Claim;

(B) Appeals Process; and

(C) Claims Handbook;

(7) Section VII - Requirements of the Flood Insurance Reform Act of 2004; Point of Sale and Renewal Responsibilities:

(A) Notification of Coverages Being Purchased;

(B) Policy Exclusions that Apply;

(C) Explanation Regarding How Losses Will be Adjusted (ACV vs. RCV);

(D) Number and Dollar Amount of Claims for Property; and

(E) Acknowledgement Forms.

(8) Section VIII - Agent Resources:

(A) Write Your Own Company;

(B) FEMA Websites:

(i) http://www.fema.gov/nfip;

(ii) http://www.floodsmart.gov; and

(iii) http://training.nfipstat.com/; and

(C) Flood Insurance Manual.

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

Filed with the Office of the Secretary of State on December 30, 2005.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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Proposal publication date: November 11, 2005
For further information, please call: (512) 463-6327

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SUBCHAPTER R. UTILIZATION REVIEW AGENTS

28 TAC §§19.1703, 19.1723, 19.1724

The Commissioner of Insurance adopts amendments to §§19.1703, 19.1723, and 19.1724, concerning utilization review agents. These amendments are adopted without changes to the proposed text as published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4439).

These amendments are necessary to implement Senate Bill (SB) 51, enacted by the 79th Legislature, Regular Session, which in pertinent part revises preauthorization and verification response procedures for single service HMOs providing dental health care services or routine vision services. In addition, amendments to §19.1723 and §19.1724(a) update references and correct a typographical error.

The amendments to §19.1703 add definitions for the terms "routine vision services," consistent with the language of SB 51, and "single health care service plan," consistent with Insurance Code §843.002(26). Consistent with §843.347(h) and (i) and §843.348(i) and (j) as enacted in SB 51, the amendments to §19.1723 and §19.1724 require that an HMO providing routine vision services as a single health care service plan or providing dental health care services as a single health care service plan have appropriate personnel reasonably available at a toll-free telephone number from 8:00 a.m. to 5:00 p.m. central time Monday through Friday on each day that is not a legal holiday to receive and respond to requests for preauthorization and verification. Also consistent with the statutory requirements, the amendments require these single health care service plans to have a telephone system capable of accepting and recording incoming requests during other times and to respond to those off-hour requests no later than the next business day after the call is received.

Comment: A commenter agrees with the proposed amendments. Agency Response: The department appreciates the supportive comment.

For: Texas Hospital Association.

Against: None.

The amendments are adopted under Insurance Code §§843.151, 843.347(h) and (i), 843.348(i) and (j), and 36.001. Section 843.151 authorizes the commissioner to adopt reasonable rules as necessary and proper to implement Insurance Code Title 6 Chapter 843. Sections 843.347(h) and (i) and 843.348(i) and (j) provide that an HMO providing routine vision services as a single health care service plan or providing dental health care services as a single health care service plan is not required to comply with the statutorily specified timeframes for other carriers for receiving and responding to requests for preauthorization and verification, but must instead: have appro-

priate personnel reasonably available between 8:00 a.m. and 5:00 p.m. central time Monday through Friday to receive and respond to such requests; have a telephone system capable of accepting and recording incoming requests during other times; and respond to those off-hour requests no later than the next business day after the call is received. 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.

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

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER M. MANDATORY BENEFIT NOTICE REQUIREMENTS

28 TAC §§21.2101 - 21.2103, 21.2105, 21.2106

The Commissioner of Insurance adopts amendments to §§21.2101 - 21.2103, 21.2105 and 21.2106, concerning mandatory notice of coverage of certain tests for the detection of human papillomavirus and cervical cancer. The sections are adopted without changes to the proposed text as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7360).

These amendments are necessary to implement HB 1485 enacted by the 79th Texas Legislature, Regular Session, which added Chapter 1370 to the Texas Insurance Code, mandating certain benefits related to the detection of human papillomavirus and cervical cancer. Chapter 1370 also contains mandatory notice requirements. This adoption amends the notice provisions in 28 Texas Administrative Code, Subchapter M to implement the statutory notice requirement in §1370.004. The adoption also updates statutory references changed by the Texas Legislature's enactment of nonsubstantive revision of the Insurance Code.

The amendments to §21.2101 expand the scope of the subchapter to include the notice requirements for coverage of benefits related to the detection of human papillomavirus and cervical cancer and set an effective date for the notice requirements. The amendments to §21.2102 revise the definitions of "carrier" and "health benefit plan" to implement the provisions of HB 1485. The amendments to §21.2103 require a carrier to issue the notice related to the detection of human papillomavirus and cervical cancer and revise subsection (d) to provide that if the mandated notice is issued prior to the effective date of these amendments, the notice is deemed compliant with the subchapter's notice requirements. The amendments to §21.2105 recognize statutory changes permitting electronic distribution of notices and address requirements relating to delivery of the notice. The amendment to §21.2106 adopts a new form, number LHL391, which carriers may use to satisfy the notice requirement. The adoption also includes corrective editorial and grammatical changes for clarity as well as to update statutory references.

The department received no comments.

The amendments are adopted under Insurance Code §§1370.004, 1251.201, 1251.008, 1271.002, 843.151, and 36.001. Section 1370.004 requires health benefit plan issuers to provide written notice of coverage related to the detection of human papillomavirus and cervical cancer to each woman 18 years of age or older enrolled in the plan in accordance with rules adopted by the Commissioner. Section 1251.201 authorizes an insurer, by agreement between the insurer and the policyholder, to deliver certificates of insurance electronically. Section 1251.008 authorizes the commissioner to adopt rules necessary to administer Chapter 1251. Section 1271.002 authorizes an insurer, group hospital service corporation, or health maintenance organization, by agreement between it and the subscriber or other person entitled to receive the policy, contract, or evidence of coverage, to deliver evidences of coverage electronically. Section 843.151 authorizes the commissioner to adopt reasonable rules as necessary and proper to implement Chapter 1271. 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.

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

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SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §§21.2802, 21.2807, 21.2815, 21.2821

The Commissioner of Insurance adopts amendments to §§21.2802, 21.2807, 21.2815, and 21.2821, concerning submission of clean claims. Sections 21.2802 and 21.2815 are adopted with changes to the proposed text as published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4442). Sections 21.2807 and 21.2821 are adopted without changes and will not be republished.

These amendments are necessary to ensure that carriers are aware of the responsibility to process a clean claim submitted together with deficient claims; to ensure that penalties for failure to meet the statutory claims payment period are calculated consistently and in accordance with statutory requirements; and to provide consistency between the date for quarterly reporting of

claims data and the date for the annual reporting of the number of declinations of requests for verification and clarify the reporting period for the required verification data report.

The department held a hearing on the proposed amendments on September 7, 2005. Prior to the hearing, the department received comments from interested parties. In response to the written comments and comments from the hearing, the department has modified some of the proposed amendments in the adopted text of the rule. Many of the changes requested in the comments received would require statutory changes and were not made a part of the final adopted rules. Of the changes made as a result of comments, none introduce a new subject matter or affect persons in addition to those subject to the proposal as originally published.

Definition of "patient responsibility." The department has changed the proposed term "patient responsibility" in §21.2802(18) to "patient financial responsibility" and has changed the proposed definition in response to comments to more specifically reflect that "patient financial responsibility," as used in this rule, derives from the terms of the patient's health benefit plan. Patient financial responsibility does not include amounts due from a patient, if any, that are not included as part of the fee schedule or contracted reimbursement amount. The department is aware that some carriers structure provider fee agreements in such a way that a copayment amount may be in addition to the amount listed in the fee schedule. In such a case, the contracted amount is the fee schedule amount, and any portion of the fee schedule amount that the patient owes is classified as "patient financial responsibility" under the rule. The copayment amount that does not make up a part of the fee schedule amount is not a part of "patient financial responsibility." When carriers structure provider fee agreements in such a way as to include copayment requirements to be a part of the fee schedule amount, the copayment amount would correctly be classified as "patient financial responsibility" under the rule. The department has also changed, as necessary, references to the term "patient responsibility" throughout the rule to "patient financial responsibility."

Penalty calculation for underpaid claims. The department also received comments on proposed §21.2815(b)(1), (d), and (e) regarding the manner in which penalties should be calculated when a carrier underpays a claim. One particular commenter requested that the department consider including a patient's financial responsibility amounts as part of the underpayment penalty calculation. The commenter indicated that a carrier's initial underpayment could frustrate or delay a provider's ability to collect the correct patient financial responsibility amount and that the penalty should take this into account by including that amount as part of the carrier's underpaid amount. The adopted amendment does not incorporate this change, as the change would be inconsistent with Insurance Code §§843.342 and 1301.137, which penalizes carriers based on amounts owed by the carriers and not amounts owed by patients. The statute penalizes a carrier for failure to timely and correctly pay only its portion of the claim by requiring the carrier to "pay a penalty on the balance of the claim" based on when the "balance of the claim" is eventually paid. If "the balance of the claim" were to include amounts the provider was delayed in collecting from the patient, the carrier's penalty payment responsibilities would be tied to the date the patient paid any applicable patient financial responsibility amounts. Such a result potentially penalizes a carrier based on lack of payment by the patient, which is outside the carrier's control. Therefore, the "balance of the claim" must be understood to be the balance of the claim owed by the carrier, and a penalty that includes any amounts that the patient must pay is not a "penalty on the balance of the claim."

Section 21.2802. Adopted §21.2802(2) sets forth a definition for "batch submission" to clarify use of the term in §21.2807 detailing a carrier's obligations with respect to multiple claims submitted together. The department has additionally changed incorrect subsection references in the proposed definition of "clean claim" in §21.2802(6)(A)(i) - (ii).

Section 21.2807. Section 21.2807 is amended to provide that a carrier may not deny or refuse to process a clean electronic claim because the claim is submitted together with, or in a batch submission with, deficient claims. This amendment is consistent with statutory and regulatory requirements that, upon receipt of an electronic clean claim at the designated address for claims receipt, a carrier must pay, deny, or audit the claim within 30 days. SB 50, enacted by the 79th Legislature, Regular Session, requires that carriers include upon request a provision in the provider's contract indicating that the carrier will not deny or refuse to process an otherwise clean claim submitted in a batch of claims that may contain deficient claims. The department has adopted amendments to rules in Chapters 3 and 11 of this title to implement SB 50; these amendments are also published in this edition of the Texas Register. While SB 50 enables providers to be better informed of their rights under their contracts with health benefit plans, adopted §21.2807 clarifies that the requirement to process an electronic claim exists independently of the existence of a provision in the contract addressing batch claim submissions. The adopted amendments also change specific references to other rules in this title to general references. These changes are necessary to reduce the need for the department to frequently update and revise this section because of amendments to the referenced rules that result in a change in the citations. These changes are also user friendly in that persons who must comply with the rules will not have to monitor frequent changes and updates.

Section 21.2815. The adopted amendments to §21.2815 clarify the methodology for calculating a penalty for failure to meet the statutory claims payment period, as specified in Insurance Code §1301.103 and §843.338, when applicable patient financial responsibility under the terms of the patient's health benefit plan is considered. The department has received inquiries regarding the issue of coinsurance responsibilities when calculating a penalty for underpayment. The adopted rule addresses the penalty section as a whole and includes examples that make use of patient financial responsibility to provide greater clarity in instances of late payments penalties and underpayment penalties. Section 21.2815(b)(1) clarifies that patient financial responsibility is included in the contracted rate used for calculating a penalty. Amended §21.2815(d) as adopted clarifies the method for calculating a penalty on an underpaid claim. Insurance Code §843.342(g) and §1301.137(g) requires the carrier to calculate "the ratio of the amount underpaid on the contracted rate to the contracted rate as applied to the billed charges." Thus, the carrier pays the billed charges rate for the portion of the claim the carrier fails to timely pay. Section 21.2815(d) as amended includes an example to clarify how coinsurance or other patient responsibility should be treated when calculating an underpayment penalty. The amendment also clarifies that the rate used in the calculation should be the balance the carrier owes on the claim to the total amount the provider is due under the contract with the health plan. This represents the amount left unpaid after the carrier's initial payment. This is consistent with the statu-

tory directive in Insurance Code §843.342(d) and §1301.137(d) that the carrier must pay "a penalty on the amount not timely paid." This percentage is then applied to the specific portion of the claim that was paid late. The adopted amendments include examples with patient financial responsibility amounts to assist providers and carriers in understanding the correct calculation methods. In response to comments, the department has modified the example in proposed §21.2815(e) which demonstrates how a secondary carrier should calculate penalties for its proportionate responsibility for a claim. The change in the proposed amendment indicates that the overall percentage of the claim owed by the secondary carrier will impact the penalty calculations such that the contracted rate and billed charges amounts are both reduced to be consistent with the secondary carrier's obligation on the claim. The adoption also corrects the format for monetary amounts to include cents for consistency with subsection (d) as amended.

Amended §21.2821 as adopted changes the deadline for the annual verification reporting requirement from on or before July 31 to on or before to August 15 of each year for consistency with the date for quarterly reporting of claims data as required in §21.2821. The adopted amendments also specify that the 12-month period for reporting the number of declinations of requests for verification is July 1 of the prior year through June 30 of the current year. This amendment is necessary to clarify the time period for which reporting is required.

Section 21.2802 as adopted is amended to add a definition of "patient financial responsibility" to clarify that the amount reflected by this term derives from the patient's health benefit plan and includes any portion of the contracted rate for which the patient is responsible under the patient's health benefit plan. Amended §21.2802 also defines "batch submission" to be consistent with the usage of that term in federal standardized electronic health care transactions.

The adopted amendments to §21.2807 provide that a carrier may not deny or refuse to process a clean electronic claim because the claim is submitted together with, or in a batch submission with, claims that are deficient and clarify that the requirement to process an electronic clean claim exists when the carrier receives the claim despite the claim being included among other claims that may or may not be clean. In addition, the adopted amendments substitute general references for the more specific references to other rules in this title which will reduce the need for frequent updating and revisions. Section 21.2815 as adopted includes amendments to the examples of penalty calculations for failure to meet the statutory claims payment period as specified in Insurance Code §§1301.105 and 843.338. These amendments clarify the methodology for calculating a penalty when applicable patient financial responsibility under the terms of the health care plan is taken into consideration. The amendments clarify that the contracted rate is the total amount the provider is due under the terms of the provider contract and includes patient financial responsibility for any portion of that amount. The adopted amendments also include an additional example in §21.2815(e) for calculating a penalty for claims that are subject to coordination of benefits for multiple carriers. The amendment indicates that the overall percentage of the claim owed by the secondary carrier will impact the penalty calculations such that the contracted rate and billed charges amounts are both reduced to be consistent with the secondary carrier's obligation on the claim. The adopted amendments to §21.2821 change the deadline for the annual reporting requirement for the number of declinations of requests for verification and clarify the time period for which reporting is required.

§21.2802. Definitions: "Batch submission." Comment: Commenters support the department's proposed definition, with one commenter noting that it is consistent with the term as applied to federal standardized health care transactions.

Agency Response: The department appreciates the supportive comments.

"Patient responsibility."

Comment: A commenter asks that the term "patient responsibility" as defined in proposed §21.2802(18) be changed to "patient financial responsibility" to be consistent with how the term is utilized in the rules.

Agency Response: The department agrees and has made the requested change.

Comment: Commenters ask that the definition take into account the various types of out-of-pocket expenses for which the patient may be responsible under the terms of the insurance contract or evidence of coverage. Another commenter opined that the definition appears to allow physicians and providers to balance bill patients.

Agency Response: At this time, the department declines to identify by rule particular types of cost-sharing mechanisms, such as copayments, deductibles, etc., to avoid any confusion due to the various methods in which health plans may treat these charges in relation to the provider's contracted rate. Some carriers include all of a patient's out-of-pocket expenses in the contracted rate. Others do not. For example, some plans treat the copayment requirements as an amount in addition to the contracted rate. Therefore, if a carrier and provider have agreed to a $100 contracted rate for a particular service, the patient's $20 copayment will result in the provider receiving $120 for a service that is contracted for $100. The distinction the definition seeks to make is that only those patient financial responsibility amounts that are included as a portion of the amount agreed to between the provider and the carrier (the contracted rate) should be included in the penalty calculation. To include a list of particular types of cost-sharing mechanisms that may be treated differently by carriers is not helpful in making the distinction necessary for appropriate application of the definition of patient financial responsibility. The language in the definition does not affect a provider's responsibilities or rights regarding whether patients may be billed for any balance after receipt of the carrier's payment.

Comment: One commenter states the opinion that the proposed definition may lead to confusion that a provider's agreed or contracted rate imposes financial responsibility on a patient. Another commenter notes that the patient financial responsibility amount is the amount the patient is required to pay for covered services pursuant to the policy or evidence of coverage, but it is not an amount that is part of the contracted rate.

Agency Response: The department agrees with the commenters that the patient's coverage document establishes a patient's financial responsibility through the use of particular cost-sharing mechanisms such as deductibles, copayments or coinsurance percentages. The contracted rate, however, does play a part in the calculation of the amount due from the patient when coinsurance percentages are involved. Nonetheless, the department has revised the definition to clarify that patient

financial responsibility is a function of the coverage agreement rather than the provider contract.

§21.2807(d). Responsibility for batch submissions. Comment: A commenter opines that the reference to clearinghouses in SB 50 permits the department to directly regulate clearinghouses and other agents of carriers. The commenter suggests that subsection (d) be revised to include a reference to a carrier's "agent" and that the department include an express statement on this issue in its response to comments.

Agency Response: The department does not believe that SB 50 provides broad and comprehensive regulatory authority over clearinghouses or other agents of carriers not specifically subject to a statutory licensure or certification requirement. Nonetheless, the department's direct regulation of carriers and applicable prompt pay requirements operates to affect entities performing on behalf of carriers. For this reason, the department continues to look to carriers as the parties ultimately responsible for compliance with the requirements of the statute and this subchapter. The department thus declines to make the requested change.

§21.2815(b)(1), (d), and (e). Penalty calculations.

Comment: Commenters state that some contracts between carriers and providers prohibit the collection of patient deductibles or co-insurance until after the carrier adjudicates the claim and issues an explanation of benefits. The commenters assert that in such a situation, a carrier's initial payment miscalculation prevents the provider from collecting the correct payment from the patient until the carrier corrects the error and issues a corrected explanation of benefits. Because the carrier's initial miscalculation caused the delay of correct payment by the patient, the commenters ask that the penalty calculation account for those amounts the provider is delayed in collecting. Another commenter argues that patient responsibility amounts should be included in the penalty calculation against the carrier because providers have difficulty in confirming patient responsibility amounts due to the fact that deductibles may be met at any time after the initial provision of the services for which the carrier makes an initial underpayment, thus changing the calculation without notice to the provider.

Agency Response: It is the department's position that the statute does not support the requested revision. While the department recognizes providers do not always have the most current information regarding patient financial responsibility amounts, the statutory framework in Insurance Code §§843.342 and 1301.137 penalizes a carrier for failure to timely and correctly pay only its portion of the claim by requiring the carrier to "pay a penalty on the balance of the claim." The department interprets "the balance of the claim," as used in the statute, to include only those amounts due from but not initially paid by the carrier. This is reinforced by the fact that the date "the balance of the claim is paid" determines whether the carrier will pay 50% or 100% of the underpaid amount as a penalty. If "the balance of the claim" were to include amounts the provider was delayed in collecting from the patient, the carrier's penalty payment responsibilities would be tied to the date the patient paid any applicable patient financial responsibility amounts. Such a result would potentially penalize a carrier based on lack of payment by the patient, which is outside the carrier's control. Therefore, the "balance of the claim" must be understood to be the balance of the claim owed by the carrier and a penalty that includes any amounts that the patient must pay is not a "penalty on the balance of the claim."

Comment: A commenter expresses appreciation for the department's desire to clarify the appropriate method of calculating both late payment and underpayment penalties and could support the proposed language provided that the department changes the definition for patient financial responsibility. The commenter suggests that the definition reflect that it is the amount that the patient is required to pay for certain covered health services and may be either a set dollar amount in the form of a deductible or copayment or a percentage of eligible expenses in the form of a coinsurance as set forth in a patient's certificate of coverage or insurance policy.

Agency Response: The department appreciates the commenter's support and believes that the adopted definition of "patient financial responsibility" is broad enough to address the commenter's concern.

§21.2815(e). Penalty calculations and coordination of benefits. Comment: A commenter notes that secondary carriers often base their responsibility for a claim on their contracted rate rather than on the primary carrier's contracted rate. Thus, when the primary carrier's allowable amount is more than the secondary carrier's allowable amount, the secondary carrier makes no additional payment. The commenter asks that the rule include additional examples demonstrating how to calculate a penalty in situations in which the secondary payer's contracted rate is more than the primary payer's rate and the secondary payer's contracted rate is less than the primary payer's rate.

Agency Response: The department has added language to the example in §21.2815(e) to adequately demonstrate how the secondary carrier should calculate penalties for its proportionate responsibility for a claim. The rule establishes the primary carrier's contracted rate as the entire claim amount. Any amount owed by the secondary carrier is a percentage of that amount and this percentage is used to calculate the secondary carrier's penalty.

The department declines to include additional examples based upon the contracted rate of the secondary carrier. Such examples, which would demonstrate a secondary carrier's responsibility for the unpaid portion of the claim, are not appropriate for this rule. A secondary carrier's payment responsibilities are dictated by the coordination of benefits language in the coverage document between the secondary carrier and the patient.

§21.2821(e). Verification reporting requirement.

Comments: A commenter agrees with the proposed language that makes the reporting date consistent with the existing dates for quarterly reporting of claims data.

Agency Response: The department appreciates the supportive comment.

For: None.

For with changes: America's Health Insurance Plans, Texas Association of Health Plans, Texas Hospital Association.

Against: Seton Healthcare Network, Texas Medical Association.

The amendments are adopted under Insurance Code §§1301.007, 1301.103, 1301.137, 1212.001 - 1212.003, 843.151, 843.338, 843.342, and 36.001. Section 1301.007 authorizes the Commissioner to adopt rules necessary to implement Insurance Code Title 8 Chapter 1301, which regulates preferred provider benefit plans, and to ensure reasonable accessibility and availability of preferred provider benefits and basic level benefits to residents of this state. Section 843.151 authorizes the Commissioner to adopt reasonable rules as

necessary and proper to implement Insurance Code Title 6 Chapter 843 and Chapter 20A, which regulate health maintenance organizations. Sections 1301.103 and 843.338 require carriers to pay clean claims upon receipt and within the statutory claims payment period. Sections 1301.137 and 843.342 provide for the calculation of penalties for violations of prompt pay requirements. Sections 1212.001 and 1212.002 create the Technical Advisory Committee on Claims Processing (TACCP) to advise the commissioner on claims processing, payment and adjudication. Section 1212.003 requires the TACCP to submit a biennial report to the legislature concerning the activities of the committee. The reporting requirements in this subchapter are necessary to provide information to the TACCP in fulfilling its statutory role. 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.

§21.2802. Definitions.

The following words and terms when used in this subchapter shall have the following meanings:

(1) Audit--A procedure authorized and described in §21.2809 of this title (relating to Audit Procedures) under which an HMO or preferred provider carrier may investigate a claim beyond the statutory claims payment period without incurring penalties under §21.2815 of this title (relating to Failure to Meet the Statutory Claims Payment Period).

(2) Batch submission--A group of electronic claims submitted for processing at the same time within a HIPAA standard ASC X12N 837 Transaction Set and identified by a batch control number.

(3) Billed charges--The charges for medical care or health care services included on a claim submitted by a physician or provider. For purposes of this subchapter, billed charges must comply with all other applicable requirements of law, including Texas Health and Safety Code §311.0025, Texas Occupations Code §105.002, and Texas Insurance Code Art. 21.79F.

(4) CMS--The Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

(5) Catastrophic event--An event, including acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquake, windstorm, flood or organized labor stoppages, that cannot reasonably be controlled or avoided and that causes an interruption in the claims submission or processing activities of an entity for more than two consecutive business days.

(6) Clean claim--

(A) For non-electronic claims, a claim submitted by a physician or provider for medical care or health care services rendered to an enrollee under a health care plan or to an insured under a health insurance policy that includes:

(i) the required data elements set forth in §21.2803(b) or (c) of this title (relating to Elements of a Clean Claim); and

(ii) if applicable, the amount paid by the primary plan or other valid coverage pursuant to §21.2803(d) of this title (relating to Elements of a Clean Claim);

(B) For electronic claims, a claim submitted by a physician or provider for medical care or health care services rendered to an enrollee under a health care plan or to an insured under a health insurance policy using the ASC X12N 837 format and in compliance with all applicable federal laws related to electronic health care claims, including applicable implementation guides, companion guides and trading partner agreements.

(7) Condition code--The code utilized by CMS to identify conditions that may affect processing of the claim.

(8) Contracted rate--Fee or reimbursement amount for a preferred provider's services, treatments, or supplies as established by agreement between the preferred provider and the HMO or preferred provider carrier.

(9) Corrected claim--A claim containing clarifying or additional information necessary to correct a previously submitted claim.

(10) Deficient claim--A submitted claim that does not comply with the requirements of §21.2803(b), (c) or (e) of this title.

(11) Diagnosis code--Numeric or alphanumeric codes from the International Classification of Diseases (ICD-9-CM), Diagnostic and Statistical Manual (DSM-IV), or their successors, valid at the time of service.

(12) Duplicate claim--Any claim submitted by a physician or provider for the same health care service provided to a particular individual on a particular date of service that was included in a previously submitted claim. The term does not include corrected claims, or claims submitted by a physician or provider at the request of the HMO or preferred provider carrier.

(13) HMO--A health maintenance organization as defined by Insurance Code §843.002(14).

(14) HMO delivery network--As defined by Insurance Code §843.002(15).

(15) Institutional provider--An institution providing health care services, including but not limited to hospitals, other licensed inpatient centers, ambulatory surgical centers, skilled nursing centers and residential treatment centers.

(16) Occurrence span code--The code utilized by CMS to define a specific event relating to the billing period.

(17) Patient control number--A unique alphanumeric identifier assigned by the institutional provider to facilitate retrieval of individual financial records and posting of payment.

(18) Patient financial responsibility--Any portion of the contracted rate for which the patient is responsible pursuant to the terms of the patient's health benefit plan.

(19) Patient-status-at-discharge code--The code utilized by CMS to indicate the patient's status at time of discharge or billing.

(20) Physician--Anyone licensed to practice medicine in this state.

(21) Place of service code--The codes utilized by CMS that identify the place at which the service was rendered.

(22) Preferred provider--

(A) with regard to a preferred provider carrier, a preferred provider as defined by Insurance Code Article 3.70-3C, §1(10) (Preferred Provider Benefit Plans) or Article 3.70-3C, §1(1) (Use of Advanced Practice Nurses and Physician Assistants by Preferred Provider Plans).

(B) with regard to an HMO,

(i) a physician, as defined by Insurance Code §843.002(22), who is a member of that HMO's delivery network; or

(ii) a provider, as defined by Insurance Code §843.002(24), who is a member of that HMO's delivery network.

(23) Preferred provider carrier--An insurer that issues a preferred provider benefit plan as provided by Insurance Code Article 3.70-3C, Section 2 (Preferred Provider Benefit Plans).

(24) Primary plan--As defined in §3.3506 of this title (relating to Use of the Terms "Plan," "Primary Plan," "Secondary Plan," and "This Plan" in Policies, Certificates and Contracts).

(25) Procedure code--Any alphanumeric code representing a service or treatment that is part of a medical code set that is adopted by CMS as required by federal statute and valid at the time of service. In the absence of an existing federal code, and for non-electronic claims only, this definition may also include local codes developed specifically by Medicaid, Medicare, an HMO, or a preferred provider carrier to describe a specific service or procedure.

(26) Provider--Any practitioner, institutional provider, or other person or organization that furnishes health care services and that is licensed or otherwise authorized to practice in this state, other than a physician.

(27) Revenue code--The code assigned by CMS to each cost center for which a separate charge is billed.

(28) Secondary plan--As defined in §3.3506 of this title.

(29) Source of admission code--The code utilized by CMS to indicate the source of an inpatient admission.

(30) Statutory claims payment period--

(A) the 45-calendar-day period in which an HMO or preferred provider carrier shall make claim payment or denial, in whole or in part, after receipt of a non-electronic clean claim pursuant to Insurance Code Article 3.70-3C, §3A (Preferred Provider Benefit Plans) and Chapter 843;

(B) the 30-calendar-day period in which an HMO or preferred provider carrier shall make claim payment or denial, in whole or in part, after receipt of an electronically submitted clean claim pursuant to Insurance Code Article 3.70-3C, §3A (Preferred Provider Benefit Plans) and Chapter 843; or

(C) the 21-calendar-day period in which an HMO or preferred provider carrier shall make claim payment after affirmative adjudication of an electronically submitted clean claim for a prescription benefit pursuant to Insurance Code Article 3.70-3C, §3A(f) (Preferred Provider Benefit Plans) and §843.339, and §21.2814 of this title (relating to Electronic Adjudication of Prescription Benefits).

(31) Subscriber--If individual coverage, the individual who is the contract holder and is responsible for payment of premiums to the HMO or preferred provider carrier; or if group coverage, the individual who is the certificate holder and whose employment or other membership status, except for family dependency, is the basis for eligibility for enrollment in a group health benefit plan issued by the HMO or the preferred provider carrier.

(32) Type of bill code--The three-digit alphanumeric code utilized by CMS to identify the type of facility, the type of care, and the sequence of the bill in a particular episode of care.

§21.2815. Failure to Meet the Statutory Claims Payment Period.

(a) An HMO or preferred provider carrier that determines under §21.2807 of this title (relating to Effect of Filing a Clean Claim) that a claim is payable shall:

(1) if the claim is paid on or before the 45th day after the end of the applicable 21-, 30- or 45-day statutory claims payment period, pay to the preferred provider, in addition to the contracted rate owed on the claim, a penalty in the amount of the lesser of:

(A) 50% of the difference between the billed charges and the contracted rate; or

(B) $100,000.

(2) If the claim is paid on or after the 46th day and before the 91st day after the end of the applicable 21-, 30- or 45-day statutory claims payment period, pay to the preferred provider, in addition to the contracted rate owed on the claim, a penalty in the amount of the lesser of:

(A) 100% of the difference between the billed charges and the contracted rate; or

(B) $200,000.

(3) If the claim is paid on or after the 91st day after the end of the applicable 21-, 30- or 45-day statutory claims payment period, pay to the preferred provider, in addition to the contracted rate owed on the claim, a penalty computed under paragraph (2) of this subsection plus 18% annual interest on the penalty amount. Interest under this subsection accrues beginning on the date the HMO or preferred provider carrier was required to pay the claim and ending on the date the claim and the penalty are paid in full.

(b) The following examples demonstrate how to calculate penalty amounts under subsection (a) of this section:

(1) If the contracted rate, including any patient financial responsibility, is $10,000 and the billed charges are $15,000, and the HMO or preferred provider carrier pays the claim on or before the 45th day after the end of the applicable statutory claims payment period, the HMO or preferred provider carrier shall pay, in addition to the amount owed on the claim, 50% of the difference between the billed charges ($15,000) and the contracted rate ($10,000) or $2,500. The basis for the penalty is the difference between the total contracted amount, including any patient financial responsibility, and the provider's billed charges;

(2) if the claim is paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period, the HMO or preferred provider carrier shall pay, in addition to the contracted rate owed on the claim, 100% of the difference between the billed charges and the contracted rate or $5,000; and

(3) if the claim is paid on or after the 91st day after the end of the applicable statutory claims payment period, the HMO or preferred provider carrier shall pay, in addition to the contracted rate owed on the claim, $5,000, plus 18% annual interest on the $5,000 penalty amount accruing from the statutory claim payment deadline.

(c) Except as provided by this section, an HMO or preferred provider carrier that determines under §21.2807 of this title that a claim is payable, pays only a portion of the amount of the claim on or before the end of the applicable 21-, 30- or 45-day statutory claims payment period, and pays the balance of the contracted rate owed for the claim after that date shall:

(1) If the balance of the claim is paid on or before the 45th day after the applicable 21-, 30- or 45-day statutory claims payment period, pay to the preferred provider, in addition to the contracted amount owed, a penalty on the amount not timely paid in the amount of the lesser of:

(A) 50% of the underpaid amount; or

(B) $100,000.

(2) If the balance of the claim is paid on or after the 46th day and before the 91st day after the end of the applicable 21-, 30- or

45-day statutory claims payment period, pay to the preferred provider, in addition to the contracted amount owed, a penalty in the amount of the lesser of:

(A) 100% of the underpaid amount; or

(B) $200,000.

(3) If the balance of the claim is paid on or after the 91st day after the end of the applicable 21-, 30- or 45-day statutory claims payment period, pay to the preferred provider, in addition to the contracted amount owed, a penalty computed under paragraph (2) of this subsection plus 18% annual interest on the penalty amount. Interest under this subsection accrues beginning on the date the HMO or preferred provider carrier was required to pay the claim and ending on the date the claim and the penalty are paid in full.

(d) For the purposes of subsection (c) of this section, the underpaid amount is calculated on the ratio of the balance owed by the carrier to the total contracted rate, including any patient financial responsibility, as applied to the billed charges. For example, a claim for a contracted rate of $1,000.00 and billed charges of $1,500.00 is initially underpaid at $600.00, with the insured owing $200.00 and the HMO or preferred provider carrier owing a balance of $200.00. The HMO or preferred provider carrier pays the $200.00 balance on the 30th day after the end of the applicable statutory claims payment period. The amount the HMO or preferred provider carrier initially underpaid, $200.00, is 20% of the contracted rate. To determine the penalty, the HMO or preferred provider carrier must calculate 20% of the billed charges, which is $300.00. This amount represents the underpaid amount for subsection (c)(1) of this section. Therefore, the HMO or preferred provider carrier must pay, as a penalty, 50% of $300.00, or $150.00.

(e) For purposes of calculating a penalty when an HMO or preferred provider carrier is a secondary carrier for a claim, the contracted rate and billed charges must be reduced in accordance with the percentage of the entire claim that is owed by the secondary carrier. The following example illustrates this method: Carrier A pays 80% of a claim for a contracted rate of $1,000.00 and billed charges of $1,500.00, leaving $200.00 unpaid as the patient's financial responsibility. The patient has coverage through Carrier B that is secondary and Carrier B will owe the $200.00 balance pursuant to the coordination of benefits provision of Carrier B's policy. If Carrier B fails to pay the $200.00 within the applicable statutory claims payment period, Carrier B will pay a penalty based on the percentage of the claim that it owed. The contracted rate for Carrier B will therefore be $200.00 (20% of Carrier A's $1,000.00 contracted rate), and the billed charges will be $300.00 (20% of $1,500.00). Although Carrier B may have a contracted rate with the provider that is different than Carrier A's contracted rate, it is Carrier A's contracted rate that establishes the entire claim amount for the purpose of calculating Carrier B's penalty.

(f) An HMO or preferred provider carrier is not liable for a penalty under this section:

(1) if the failure to pay the claim in accordance with the applicable statutory claims payment period is a result of a catastrophic event that the HMO or preferred provider carrier certified according to the provisions of §21.2819 of this title (relating to Catastrophic Event); or

(2) if the claim was paid in accordance with §21.2807 of this title, but for less than the contracted rate, and:

(A) the preferred provider notifies the HMO or preferred provider carrier of the underpayment after the 180th day after the date the underpayment was received; and

(B) the HMO or preferred provider carrier pays the balance of the claim on or before the 45th day after the date the insurer receives the notice of underpayment.

(g) Subsection (f) of this section does not relieve the HMO or preferred provider carrier of the obligation to pay the remaining unpaid contracted rate owed the preferred provider.

(h) An HMO or preferred provider carrier that pays a penalty under this section shall clearly indicate on the explanation of payment the amount of the contracted rate paid, the amount of the billed charges as submitted by the physician or provider and the amount paid as a penalty. A non-electronic explanation of payment complies with this requirement if it clearly and prominently identifies the notice of the penalty amount.

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

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Texas Department of Insurance
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SUBCHAPTER DD. ELIGIBILITY STATEMENTS

28 TAC §§21.3801 - 21.3808

The Commissioner of Insurance adopts new Subchapter DD, §§21.3801 - 21.3808, concerning a health benefit plan issuer's provision of enrollee eligibility statements to participating physicians and providers. Sections 21.3802 - 21.3805 are adopted with changes to the proposed text as published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4447). Sections 21.3801 and 21.3806 - 21.3808 are adopted without changes and will not be republished.

SB 1149, passed by the 79th Legislature, Regular Session, enacted Insurance Code Chapter 1274 relating to the transmission of the eligibility and payment status of enrollees of health benefit plans to contracted physicians and providers. These new sections are necessary to implement Chapter 1274, which requires health benefit plan issuers to provide certain enrollee eligibility, benefit, and financial information to participating physicians and providers (hereinafter referred to collectively as "providers"), upon a participating provider's submission of the patient's name, the patient's relationship to the primary enrollee, and the patient's birth date, and certain eligibility, benefit, and financial information related to the enrollee. Consistent with SB 1149, the department consulted with the Technical Advisory Committee on Claims Processing (TACCP) at its June 30, 2005 meeting, and solicited advice prior to initiating the rulemaking process.

The department held a hearing on the proposed rules on September 7, 2005. Prior to the hearing, the department received comments from interested parties. In response to the written comments and comments from the hearing, the

department has changed some of the proposed language in the text of the rule as adopted. None of the changes, however, introduce a new subject matter or affect persons in addition to those subject to the proposal as published.

Some commenters requested that the department add the enrollee's identification number to the list of required elements in the eligibility statement request set forth in proposed §21.3804 to maximize the information available to a health benefit plan issuer and to allow for a more expeditious response to the eligibility statement request. This request is inconsistent with Insurance Code §1274.002 which specifies a list of only three required elements for inclusion in an eligibility statement request: (i) patient's name, (ii) relationship to the primary enrollee, and (iii) birth date. Moreover, because Insurance Code §1274.002 includes the enrollee's identification number in the information that the health benefit plan issuer is required to provide to the requesting provider in response to an eligibility statement request, the inclusion of the identification number in the information required to be provided in the request is inconsistent with the statute. Section 21.3805(a) requires health benefit plan issuers to maintain a system able to provide eligibility statements in response to only the three items of information statutorily required for inclusion in a request. Section 21.3805(b) addresses those instances in which the issuer is unable to provide the eligibility statement based on the three items of statutorily required information. In response to a comment, the department has changed proposed §21.3805(b) to provide that if a plan issuer is initially unable to provide an eligibility statement, the health benefit plan issuer shall provide the initial negative response at the time of the patient's visit. Proposed §21.3805(b) is also changed to provide that if a plan issuer is initially unable to provide an eligibility statement and requests additional information from the provider, the health benefit plan issuer must contemporaneously request the additional information at the time the initial negative response is transmitted to the provider. Because §21.3805(b) provides that a health benefit plan issuer may not use a request for additional information to substitute for compliance with the unambiguous requirement of §21.3805(a) that the issuer provide an eligibility statement, upon receipt of a request that complies with statutory and regulatory requirements, the department anticipates that requests for additional information should rarely be necessary.

The department also received a comment recommending that the requirements to provide information as set forth in §21.3805(c)(1)(B) - (D) apply only to health benefit plan issuers when the provider needs the information to obtain payment for covered services to be provided to the patient. Because the protection of personal information of enrollees and covered dependents is of prime importance, the department has changed these subparagraphs to require that a health benefit plan issuer provide the name, birth date, and gender of any affected covered dependents only when the provider needs such information to obtain payment for covered services.

Some commenters urged the department to modify the requirement set forth in proposed §21.3806 that a health benefit plan issuer automatically provide a written explanation every time the issuer refuses to provide protected information because such a requirement may impose an undue and unnecessary burden upon the issuer. The rule is consistent with Insurance Code §1274.002(b), which requires that the health benefit plan issuer provide information only to a participating provider authorized under state and federal law to receive personally identifiable information. The requirement that an issuer specify the reasons for its refusal to provide the information is necessary to give the provider an opportunity to determine whether the refusal is justified and to address the issuer's concerns as applicable. Thus, the requirement allows an issuer to meet its legal obligation to protect personally identifiable information while contemporaneously providing adequate protection against potential abuses of the privacy exception set forth in §21.3806.

The department has modified §21.3802(2)(F) in response to comment to clarify that the definition of "health benefit plan" for purposes of this subchapter does not include Medicare Select, Medicare Advantage, or any successor policies regulated in accordance with federal law. Also in response to comment, the department has added in §21.3802(3)(C) a specific reference to an insurance company offering a preferred provider benefit plan operating under Insurance Code Chapter 1301. This addition is to clarify that such a company is a health benefit plan issuer for purposes of this subchapter.

The department has made minor grammatical and punctuation corrections to proposed §21.3803(a) and (b). The department has corrected a typographical error in §21.3804(c) to clarify that the subsection refers to a request for enrollee benefits submitted under §21.3805(c)(2)(B).

Adopted §21.3801 defines the scope of the subchapter and provides that, consistent with §1274.005, the provisions of Insurance Code §1274.002 and this subchapter do not apply to Medicaid and Children's Health Insurance Program (CHIP) plans. Section 21.3802 defines terms used within the subchapter. Section 21.3803 requires that health benefit plan issuers provide written notice to providers of the acceptable method(s) for requesting eligibility statements. The written notice is required to be delivered to providers that enter into or renew contracts with a health benefit plan issuer on or after January 31, 2006. Section 21.3803 also specifies the means by which a request for an eligibility statement may be accepted by the health benefit plan issuer. Section 21.3804 identifies the information a provider must include in a request for an eligibility statement. Section 21.3805 requires health benefit plan issuers to maintain a system that can provide eligibility statements in response to the three items of information statutorily required for a request. Section 21.3805 further details the required content of an eligibility statement and the requirement that the health benefit plan issuer provide a response to a request for an eligibility statement in such a manner as to give a provider access to the eligibility information at the time of the enrollee's visit. Section 21.3805(b) addresses those instances in which the issuer is unable to provide the eligibility statement based on the three items of statutorily required information and requires that the issuer provide the response in such instances in such a manner as to give a provider access to the response at the time of the patient's visit and provides that the issuer may contemporaneously request additional information to assist the issuer in providing the eligibility statement. An eligibility statement provided under this section is not required to be in writing and may be delivered telephonically, electronically, or by internet website portal as provided in Insurance Code §1274.002(a) and consistent with the procedures in §21.3803 for the submission of the eligibility statement request to the health benefit plan issuer.

Section 21.3806 provides that a health benefit plan issuer may refuse to provide all or a portion of an eligibility statement if applicable privacy laws prevent disclosure. Section 21.3806 also requires the health benefit plan issuer, upon refusing to provide an eligibility statement, to describe the reason(s) for refusing to provide the information. The section further requires that within

three days of refusing to provide an eligibility statement, the health benefit plan issuer must also provide a written explanation of the reason(s) for refusal and identify the applicable law(s) that prevent disclosure. Section 21.3807 specifies that an eligibility statement is not a verification under §19.1724 of this title. Section 21.3808 contains a severability provision.

§21.3802. Definitions of "health benefit plan" and "health benefit plan issuer." Comment: Some commenters express concern that these definitions do not clearly indicate that the provisions of Subchapter DD apply to preferred provider benefit plans.

Agency Response: While the department's position is that the general language referencing "insurance companies" in proposed §21.3802(3)(C) includes insurers issuing preferred provider benefit plans, the department has added a specific reference in the definition of "health benefit plan issuers" to clarify the rule's applicability to an insurance company offering preferred provider benefit plans. Because a preferred provider benefit plan is an insurance policy as set forth in the definition of "health benefit plan" in proposed §21.3802(2), a change to the definition of that term is unnecessary.

Comment: A commenter requests that the definition of "health benefit plan" exclude Medicare Advantage plans and any successor plans that may be developed for the Medicare Program in the future.

Agency Response: The department agrees and has modified §21.3802(2)(F) to exclude Medicare Advantage or any successor policies regulated by federal law.

§21.3802. Definition of "participating provider."

Comment: A commenter believes that the definition of "participating provider" should be expressly limited to new Subchapter DD "to prevent overzealous interpretation by health plans."

Agency Response: The department disagrees that such a change is necessary, as §21.3802 indicates that all of the definitions apply to the words and terms as used in Subchapter DD. Therefore, these definitions do not apply to other subchapters.

§21.3803(b). Method for requesting eligibility statements.

Comment: A commenter expresses concern that the word "may" could lead persons to believe that a plan has discretion regarding acceptance of eligibility statement requests and asks that the word "shall" be used in its place.

Agency Response: The department disagrees that such a change is necessary because §21.3805(a) clearly states that a plan issuer "must" provide an eligibility statement upon receipt of a request. The use of the word "may" in §21.3803(b) relates to the options the plan issuer has in selecting how it may receive requests. Section 21.3803(a), however, requires issuers to communicate to providers the acceptable methods for making such requests.

§21.3804. Requests for eligibility statements.

Comment: A commenter supports the department's proposed new subsection (b), which limits the information required for inclusion in an eligibility statement request to three elements. Other commenters believe that the department should expand the list of required elements in a request to include all information on a patient's identification card, if available or, at a minimum, the enrollee's identification number. The commenters believe that this information will assist the issuer in providing an eligibility statement in an expeditious manner while ensuring accuracy and privacy protection.

Agency Response: The department appreciates the supportive comment regarding the content of an eligibility request. Insurance Code §1274.002 limits the information required for inclusion in a request for an eligibility statement to the three information elements specified in §21.3804(b) and does not include the identification number. Instead, Insurance Code §1274.002 specifically requires that issuers provide the enrollee's identification number in response to a request. Thus, the statute does not support a requirement that providers include the identification number as part of the initial request. While an issuer may not routinely require additional information, providers may choose to furnish available additional information to enable issuers to identify enrollees' eligibility information more quickly and accurately.

§21.3805. Requirement to provide eligibility statements

Comment: A commenter notes that the intent of the statute and the rules is for the plan to provide the required information as soon as possible after a phone call from a physician or provider and asks whether the response can be verbal and whether the response must be provided within the plan's normal business hours.

Agency Response: Insurance Code §1274.002 specifically contemplates telephonic exchanges of eligibility information. Therefore, an issuer may respond verbally to a request for an eligibility statement. Insurance Code §1274.002(a) governs the timeframe for a response to a request for an eligibility statement. An issuer must provide the information in order to allow a provider to determine the patient's eligibility status at the time of the patient's visit and must be available to both receive and respond to requests for eligibility statements during the issuer's normal business hours.

§21.3805(b). Requirement to provide eligibility statements.

Comment: A commenter states that there should be a time limitation on a health benefit plan issuer's ability to request additional information in response to a request for an eligibility statement and provides some suggested language.

Agency Response: The department agrees that if a plan issuer is initially unable to provide an eligibility statement and requests additional information from the provider, the health benefit plan issuer should provide the initial negative response and the request for additional information within the same time frame as is required for the eligibility statement. The department has changed §21.3805(b) accordingly.

§21.3805(c)(1)(B)-(D). Content of an eligibility statement.

Comment: A commenter recommends that these subparagraphs be contingent upon whether the information is necessary to obtain payment for covered services provided to the patient.

Agency Response: The department agrees and has changed the subparagraphs accordingly. The changes limit an issuer's obligation to provide information regarding covered dependents to only those circumstances when provision of the eligibility information is necessary to obtain payment for services to be rendered. Incorporating a "minimum necessary standard" into this section is consistent with the HIPAA Privacy Regulation at 42 C.F.R. §164.502(b), and will effectively limit the burden on an issuer to provide an explanation regarding applicable privacy laws as set forth in §21.3806.

§21.3805(c)(2)(A). Content of an eligibility statement.

Comment: A commenter asks whether the obligation to provide individual excluded benefits or limitations requires the plan to provide the enrollee's individual personal information that is provided to an employer for group coverage. Because SB 1149 applies only to group policies, the commenter seeks clarification as to the type of information that is being requested for individuals.

Agency Response: In the context of §21.3805(c)(2)(A), the term "group" refers to an exclusion that is applicable to all persons covered under the group policy, and the term "individual" refers to any exclusion that applies to an individual enrollee, such as a preexisting condition exclusion.

§21.3806. Privacy issues.

Comment: A commenter requests that the department modify the section on privacy issues to require health benefit plan issuers to obtain whatever authorization is necessary under applicable federal and state law to disclose a complete eligibility statement to a requesting physician or provider or strike the section in its entirety. Another commenter requests that the department caution carriers against pretext refusals and remind carriers that HIPAA privacy standards may not provide a blanket rationale for denial of eligibility statements. Other commenters believe that the requirement that issuers provide a written explanation every time they refuse to provide protected health information (e.g., name, birth date, and gender of other covered individuals) to a requesting physician or provider is unduly burdensome and unnecessary. These commenters request that such an explanation be required only upon a physician or provider's request.

Agency Response: The department disagrees that the rule requires the plan issuer to obtain an authorization to disclose the requested information. Section 21.3806 is consistent with Insurance Code §1274.002(b), which states that the plan issuer must provide the information "only to a participating provider who is authorized under state and federal law to receive personally identifiable information." SB 1149 does not contain a provision that requires the health plan issuer to obtain any authorization. In addition, the rule requires a health plan issuer that refuses to provide information to specify the reasons for refusing to provide the information. The department believes that the requirement that issuers provide a written explanation of the reasons for refusing to provide certain eligibility information is necessary to ensure that requesting physicians and providers have an opportunity to evaluate and address any identified privacy concerns and also to protect against potential abuses of the privacy exception. The department believes that this requirement allows an issuer to meet its legal obligation to protect personally identifiable information while at the same time providing adequate protection against such potential abuses. To ensure that these goals are met, issuers must provide such explanations whenever they are unable to provide the requested information, rather than only upon request. In addition, it is important to note that adopted §21.3805(c) specifies that the name, birth date, and gender of other covered individuals are required as part of an eligibility statement only if the information is necessary to obtain payment for covered services. Because an issuer will not have to provide an explanation for every request, the requirement should not be unduly burdensome.

For: None.

For with changes: America's Health Insurance Plans, Texas Association of Health Plans, Texas Association of Life and Health Insurers, and Texas Medical Association. Against: Texas Hospital Association.

The new sections are adopted under Insurance Code Chapter 1274 and §36.001. Chapter 1274 requires health benefit plan issuers to provide statutorily specified enrollee eligibility statements to participating providers upon request, and §1274.004 requires the Commissioner of Insurance to adopt rules as necessary to implement the chapter. Section 1274.005 provides that if the Commissioner, in consultation with the Commissioner of Health and Human Services, determines that a provision of §1274.002 will cause a negative fiscal impact on the state with respect to providing benefits or services under Subchapter XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), or Subchapter XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), the Commissioner of Insurance by rule shall waive the application of that provision to the providing of those benefits or services. 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.

§21.3802. Definitions.

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

(1) Enrollee--An individual who is eligible for coverage under a health benefit plan, including a covered dependent.

(2) Health benefit plan--A group, blanket, or franchise insurance policy, a certificate issued under a group policy, a group hospital service contract, or a group subscriber contract or evidence of coverage issued by a health maintenance organization that provides benefits for health care services. The term does not include:

(A) accident-only or disability income insurance coverage or a combination of accident-only and disability income insurance coverage;

(B) credit-only insurance coverage;

(C) disability insurance coverage;

(D) coverage only for a specified disease or illness;

(E) Medicare services under a federal contract;

(F) Medicare supplement, Medicare Select, Medicare Advantage, or any successor policies regulated in accordance with federal law;

(G) long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(H) coverage that provides only dental or vision benefits;

(I) coverage provided by a single service health maintenance organization;

(J) coverage issued as a supplement to liability insurance;

(K) workers' compensation insurance coverage or similar insurance coverage;

(L) automobile medical payment insurance coverage;

(M) a jointly managed trust authorized under 29 U.S.C. Section 141 et seq. that contains a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages,

hours, and working conditions of the employees that is authorized under 29 U.S.C. Section 157;

(N) hospital indemnity or other fixed indemnity insurance coverage;

(O) reinsurance contracts issued on a stop-loss, quota-share, or similar basis;

(P) liability insurance coverage, including general liability insurance and automobile liability insurance coverage; or

(Q) coverage that provides other limited benefits specified by federal regulations.

(3) Health benefit plan issuer--Any entity that issues a health benefit plan, including:

(A) a health maintenance organization operating under Insurance Code Chapter 843;

(B) an approved nonprofit health corporation that holds a certificate of authority under Insurance Code Chapter 844;

(C) an insurance company, including an insurance company offering a preferred provider benefit plan under Insurance Code Chapter 1301;

(D) a group hospital service corporation operating under Insurance Code Chapter 842;

(E) a fraternal benefit society operating under Insurance Code Chapter 885; or

(F) a stipulated premium company operating under Insurance Code Chapter 884.

(4) Health care provider--

(A) a person, other than a physician, who is licensed or otherwise authorized to provide a health care service in this state, including:

(i) a pharmacist or dentist; or

(ii) a pharmacy, hospital, or other institution or organization;

(B) a person who is wholly owned or controlled by a provider or by a group of providers who are licensed or otherwise authorized to provide the same health care service; or

(C) a person who is wholly owned or controlled by one or more hospitals and physicians, including a physician-hospital organization.

(5) Participating provider--

(A) a physician or health care provider who contracts with a health benefit plan issuer to provide medical care or health care to enrollees in a health benefit plan; or

(B) a physician or health care provider who accepts and treats a patient on a referral from a physician or provider described by subparagraph (A) of this paragraph.

(6) Physician--

(A) an individual licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code;

(B) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes);

(C) a nonprofit health corporation certified under Chapter 162, Occupations Code;

(D) a medical school or medical and dental unit, as defined or described by §§61.003, 61.501, or 74.601, Education Code, that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(E) another entity wholly owned by physicians.

(7) Primary enrollee--The individual who is the certificate holder and whose employment or other membership status, except for family dependency, is the basis for eligibility under the health benefit plan.

§21.3803. Method for Requesting Eligibility Statements.

(a) Beginning January 31, 2006, a health benefit plan issuer shall, in writing, communicate to each participating provider that enters into or renews a contract with the health benefit plan issuer, the method or methods by which the provider may request an eligibility statement. The health benefit plan issuer may communicate the method or methods a provider may use to request an eligibility statement in existing materials, such as a provider manual, so long as the information is clearly identified and properly captioned with an underlined, bold-faced, or otherwise conspicuous heading.

(b) A health benefit plan issuer may accept a request for an eligibility statement by:

(1) telephone;

(2) Internet website portal; or

(3) other electronic means.

§21.3804. Requests for Eligibility Statements.

(a) A participating provider may, prior to providing services to an enrollee, request an eligibility statement using a method designated by the health benefit plan issuer.

(b) A request under subsection (a) of this section must include:

(1) the enrollee's full name;

(2) the enrollee's relationship to the primary enrollee; and

(3) the enrollee's birth date.

(c) If the participating provider is seeking information concerning the enrollee's benefits under §21.3805(c)(2)(B) of this subchapter (relating to Requirement to Provide Eligibility Statements), the request must also include a description of the specific type or category of service.

§21.3805. Requirement to Provide Eligibility Statements.

(a) A health benefit plan issuer shall maintain a system to enable it to provide eligibility statements to participating providers using the information provided under §21.3804(b) and (c) of this subchapter (relating to Requests for Eligibility Statements). On receipt of a request for an eligibility statement that complies with §21.3804 of this subchapter, a health benefit plan issuer must provide an eligibility statement to the participating provider allowing the provider access to the information at the time of the enrollee's visit.

(b) If the health benefit plan issuer is unable to provide an eligibility statement, the health benefit plan issuer shall notify the participating provider such that the provider receives the response at the time of the patient's visit and may contemporaneously request additional information to assist the health benefit plan issuer in providing

an eligibility statement. A health benefit plan issuer may not use a request for additional information to satisfy the requirement that the issuer maintain a system to provide eligibility statements using the information described in §21.3804(b) and (c) of this subchapter.

(c) An eligibility statement provided under this section shall include information that will enable the participating provider to determine at the time of the request:

(1) the enrollee's identification and eligibility under the health benefit plan, including:

(A) the enrollee's identification number assigned by the health benefit plan issuer;

(B) the name of the enrollee and, if necessary to obtain payment for services to be provided to the patient, the names of any affected covered dependents;

(C) the birth date of the enrollee and, if necessary to obtain payment for services to be provided to the patient, the birth dates of any affected covered dependents;

(D) the gender of the enrollee and, if necessary to obtain payment for services to be provided to the patient, the gender of any affected covered dependent; and

(E) the current enrollment and eligibility status of the enrollee under the health benefit plan;

(2) the enrollee's benefits, including:

(A) excluded benefits or limitations, both group and individual; and

(B) if the participating provider included the information required by §21.3804(c) of this subchapter, whether the specific type or category of service is a benefit under the policy; and

(3) the enrollee's financial information, including:

(A) copayment requirements, if any; and

(B) the unmet amount of the enrollee's deductible or enrollee financial responsibility.

(d) The information required to be provided under this section is limited to information in the possession of and maintained by the health benefit plan issuer in the ordinary course of business at the time of a request for an eligibility statement.

(e) A health benefit plan issuer may not directly or indirectly charge a participating provider for an eligibility statement.

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

Filed with the Office of the Secretary of State on December 30, 2005.

TRD-200506147
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: January 19, 2006
Proposal publication date: August 5, 2005
For further information, please call: (512) 463-6327

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

37 TAC §146.11

The Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §146.11, concerning releasee's motion to reopen hearing or reinstate supervision. The amendment is adopted without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5942). The text of the rule will not be republished.

The amended rule is adopted for the purpose of clarifying the procedures for submission of a releasee's motion to reopen hearing or reinstate supervision.

No public comment was received regarding adoption of the amendment.

The amended rule is adopted under §§508.0441, 508.045, 508.281, and 508.283, Texas Government Code. Section 508.0441 vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045 provides parole panels with the authority to grant, deny, or revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

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

Filed with the Office of the Secretary of State on December 27, 2005.

TRD-200506114
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: January 16, 2006
Proposal publication date: September 16, 2005
For further information, please call: (512) 406-5388

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §139.35(b)

Classification	Violation	Citation	Suggested Sanctions
Administrative	Failure to return seal imprint and/or portrait	§133.97(e), (f); §137.31(a)	Reprimand/$250.00
	Failure to report: change of address or employment, or of any criminal convictions	§137.5	Reprimand/$100.00
	Failure to respond to Board communications	§137.51(c)	Reprimand/$500.00
	Failure to include "inactive" or "retired" representation with title while in inactive status	§137.13(f)	Reprimand/$250.00
Engineering Misconduct	Gross negligence	§137.55(a), (b)	Revocation/$3,000.00
	Incompetence; includes performing work outside area of expertise	§137.59(a), (b)	3 year suspension/ $3,000.00
	Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional engineer	§139.43(b)	3 year suspension/$3,000.00
	Felony Conviction with incarceration	§139.43(a)	Revocation/$3,000.00
Licensing	Fraud or deceit in obtaining a license	§1001.452(a)(2), §1001.453	Revocation/$3,000.00
	Retaliation against a reference	§137.63(c)(3)	1 year probated suspension/$1,500.00
	Enter into a business relationship which is in violation of §137.77 of this title (relating to Firm Compliance)	§137.51(d)	1 year probated suspension/$1,000.00
Ethics Violations	Failure to engage in professional and business activities in an honest and ethical manner	§137.63(a)	2 year probated suspension/$2,500.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are fraudulent, deceitful, or misleading	§137.57(a), (b)	2 year suspension/$2,500.00
	Conflict of interest	§137.57(c), (d)	2 year suspension/$2,500.00
	Inducement to secure specific engineering work or assignment	§137.63(c)(4)	2 year probated suspension/$2,500.00
	Accept compensation from more than one party for services on the same project	§137.63(c)(5)	2 year probated suspension/$2,500.00
	Solicit professional employment in any false or misleading advertising	§137.63(c)(6)	1 year probated suspension/$2,500.00
	Offer or practice engineering while license is expired or inactive	§137.7(a), §137.13(g)	1 year probated suspension/$500.00
	Failure to act as a faithful agent to their employers or clients	§137.63(b)(4)	1 year probated suspension/$1,500.00

	Reveal confidences and private information	§137.61(a), (b), (c)	Reprimand/$1,500.00
	Attempt to injure the reputation of another	§137.63(c)(2)	1 year probated suspension/$1,500.00
	Retaliation against a complainant	§137.63(c)(3)	1 year probated suspension/$1,500.00
	Aiding and abetting unlicensed practice or other assistance	§137.63(b)(3), §137.63(c)(1)	3 year probated suspension/$3,000.00
	Failure to report violations of others	§137.55(c)	Reprimand/$1,500.00
	Failure to consider societal and environmental impact of actions	§137.55(d)	Reprimand/$1,500.00
	Failure to prevent violation of laws, codes, or ordinances	§137.63(b)(1), (2)	Reprimand/$1,500.00
	Failure to conduct engineering and related business in a manner that is respectful of the client, involved parties and employees	§137.63(b)(5)	1 year probated suspension/$1,500.00
	Competitive bidding with governmental entity	§137.53	Reprimand/$1,500.00
	Expressing an opinion before a court or other public forum which is contrary to generally accepted scientific and engineering principals without fully disclosing the basis and rationale for such an opinion	§137.59(c)	2 year suspension/$2,500.00
	Falsifying documentation to demonstrate compliance with CEP	§137.17(p)(2)	2 year suspension/$2,500.00
	Action in another jurisdiction	§137.65(a), (b)	Similar sanction as listed in this table if action had occurred in Texas
Improper use of Seal			
	Failure to safeguard seal	§137.33(d)	Reprimand/$1,000.00
	Failure to sign, seal, date work	§137.33(e),(f), (h); §137.35 (a), (b)	Reprimand/$500.00
	Alter work of another	§137.33(i), §137.37(3)	1 year probated suspension/$1,500.00

	Sealing work not performed or directly supervised by the professional engineer	§137.33(b)	Reprimand/$1,000.00
	Practice or affix seal with expired or inactive license	§137.13(g), §137.37(2)	1 year probated suspension/$500.00
	Practice or affix seal with suspended license	§137.37(2)	Revocation/$3,000.00
	Preprinting of blank forms with engineer seal; use of a decal or other seal replicas; rubber stamp or computer-generated signature (scanned image of original) in lieu of actual signature	§137.31(e), (f)	1 year probated suspension/$1,500.00
	Sealing work endangering the public	§137.37(1)	Revocation/$3,000.00
	Work performed by more than one engineer not attributed to each engineer	§137.33(g)	Reprimand/$500.00
	Improper use of standards	§137.33(c)	Reprimand/$500.00

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.

Comptroller of Public Accounts

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Notice of Intent to Amend Contract

Pursuant to Chapter 404, Texas Government Code, the Comptroller of Public Accounts (Comptroller), acting through the Texas Treasury Safekeeping Trust Company, announces this notice of amendment and renewal of investment management services contracts.

The following contracts are renewed for the period beginning January 1, 2006.

A contract is renewed with Chicago Equity Partners, LLC, 180 N. LaSalle, Suite 3800, Chicago, Illinois 60601. The product is Mid Cap Core Equities. The total amount of fees under the contract is based on the value of assets under management; the maximum payments for the 2006 renewal period will vary accordingly. The amendment continues the contract through January 31, 2006 and thereafter for successive 30-day periods unless the Comptroller gives notice not to renew.

A contract is renewed with Biscayne Advisors, Inc., 2911 Turtle Creek Blvd., #800, Dallas, Texas 75219. The product is Large Cap Core Equities. The total amount of fees under the contract is based on the value of assets under management; the maximum payments for the 2006 renewal period will vary accordingly. The amendment continues the contract through January 31, 2006 and thereafter for successive 30-day periods unless the Comptroller gives notice not to renew.

A contract is renewed with Enhanced Investment Technologies, LLC, 2401 PGA Boulevard, Suite 200, Palm Beach Gardens, Florida 33410. The product is Large Cap Growth Equities. The total amount of fees under the contract is based on the value of assets under management; the maximum payments for the 2006 renewal period will vary accordingly. The amendment continues the contract through January 31, 2006 and thereafter for successive 30-day periods unless the Comptroller gives notice not to renew.

A contract is renewed with TIMCO Asset Management, Inc. (formerly known as Travelers Investment Management Company that was formerly a wholly-owned subsidiary of Citigroup Global Markets Holdings, Inc. and that is currently a wholly-owned subsidiary of Legg Mason, Incl.), 100 First Stamford Place, Stamford, Connecticut 06903. The product is Large Cap Core Equities. The total amount of fees under the contract is based on the value of assets under management; the maximum payments for the 2006 renewal period will vary accordingly. The amendment continues the contract through January 31, 2006 and thereafter for successive 30-day periods unless the Comptroller gives notice not to renew.

For further information, please contact: William Clay Harris, Assistant General Counsel for Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas 78774, telephone number: (512) 936-5854, fax: (512) 475-0973, or by e-mail at contracts@cpa.state.tx.us.

TRD-200600039
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 4, 2006

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Notice of No Contract Award

The Comptroller of Public Accounts (Comptroller) State Energy Conservation Office (SECO) announces that no contract was awarded for education outreach services for SECO's Schools and Local Government Program under RFP 174b. The Comptroller anticipates that the RFP will be re-issued at a later date.

The RFP was published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7761) (RFP #174b).

TRD-200600038
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 4, 2006

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Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Frank Chmielowski dba Panchos Country Store, Docket No. 2003-1041-PST-E on December 16, 2005 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shannon Strong, Staff Attorney, at (512) 239-0252, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso Merchant Energy-Petroleum Company formerly known as Coastal Refining and Marketing, Inc., Docket No. 2001-1023-AIR-E on December 16, 2005 assessing $272,097 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Staff Attorney, at (512) 239-2029, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Galveston, Docket No. 2003-0384-MWD-E on December 16, 2005 assessing $65,725 in administrative penalties with $13,145 deferred.

Information concerning any aspect of this order may be obtained by contacting J. 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 David A. Fenoglio dba Sunset Water System, Docket No. 2003-0038-PWS-E on December 16, 2005 assessing $4,725 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 Western States Realty LLC, Docket No. 2003-1496- MSW-E on December 20, 2005 assessing $4,650 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 Khail Enterprises, Inc. dba Spin-N-Market 5, Docket No. 2003-0983-PST-E on December 16, 2005 assessing $1,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney, at (817) 588-5927, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Industrial Spray Painting, Inc., Docket No. 2003- 1361-AIR-E on December 16, 2005 assessing $3,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator, at (512) 239-1768, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bishop Bailey, Docket No. 2004-0552-MSW-E on December 16, 2005 assessing $6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney, at (210) 490-3096, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jimmy Colter & Jimmy Holt dba Linden Fuel Center, Docket No. 2004-0578-PST-E on December 16, 2005 assessing $8,500 in administrative penalties with $1,700 deferred.

Information concerning any aspect of this order may be obtained by contacting A. Sunday Udoetok, Enforcement Coordinator, at (512) 239-0739, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SRS Investments, L.L.C. dba McCloud Grocery, Docket No. 2004-0951-PST-E on December 16, 2005 assessing $3,210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Minerva Benitez dba B & G Grocery & Supplies, Docket No. 2004-1020-PST-E on December 16, 2005 assessing $3,150 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 Duke Energy Field Services, LP, Docket No. 2004- 1334-AIR-E on December 16, 2005 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator, at (512) 239-2680, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magellan Terminals Holdings, L.P., Docket No. 2004-1409-AIR-E on December 16, 2005 assessing $19,000 in administrative penalties with $3,800 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 7-Eleven, Inc. dba 7-Eleven Store 18765, Docket No. 2004-1606-PST-E on December 16, 2005 assessing $2,425 in administrative penalties.

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 Weirich Bros., Inc., Docket No. 2005-0005-WQ-E on December 20, 2005 assessing $1,640 in administrative penalties with $328 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 Duke Energy Field Services L.P. dba Waha Gas Plant, Docket No. 2005-0035-AIR-E on December 16, 2005 assessing $150,150 in administrative penalties with $30,030 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela 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 S. D. Harrison dba San Pedro Village, Docket No. 2005-0060-PWS-E on December 16, 2005 assessing $1,955 in administrative penalties.

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 D.B. Western Inc-Texas, Docket No. 2005-0072- IWD-E on December 16, 2005 assessing $8,845 in administrative penalties with $1,769 deferred.

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 S.L.C. Water Supply Corporation, Docket No. 2005- 0108-PWS-E on December 16, 2005 assessing $1,925 in administrative penalties with $385 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator, at (512) 239-3308, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Formosa Plastics Corporation, Texas, Docket No. 2005-0125-AIR-E on December 16, 2005 assessing $20,916 in administrative penalties.

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.

A default order was entered regarding Niranjan Patel dba Columbus Mini Mart, Docket No. 2005-0154-PST-E on December 16, 2005 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Superior Derrick Services, Inc., Docket No. 2005- 0269-MWD-E on December 16, 2005 assessing $3,680 in administrative penalties with $736 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, at (817) 588-5886, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Johann Haltermann, Ltd., Docket No. 2005-0287- AIR-E on December 16, 2005 assessing $7,140 in administrative penalties with $1,428 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 Ricky Lynn Freeman dba Freeman's Station, Docket No. 2005-0378-PST-E on December 16, 2005 assessing $6,300 in administrative penalties with $1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator, at (512) 239-1768, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valley Proteins, Inc., Docket No. 2005-0389-AIR-E on December 16, 2005 assessing $570 in administrative penalties with $114 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, at (817) 588-5886, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Degussa Engineered Carbons, L.P., Docket No. 2005- 0410-IWD-E on December 16, 2005 assessing $13,250 in administrative penalties with $2,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator, at (512) 239-5025, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Grapeland, Docket No. 2005-0414-MWD-E on December 16, 2005 assessing $3,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator, at (713) 422-8931, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N. E. Jones Oil Company, Inc., Docket No. 2005- 0440-PST-E on December 16, 2005 assessing $17,100 in administrative penalties with $3,420 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator, at (512) 239-2505, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bank of America, National Association dba Pain, Docket No. 2005-0495-PST-E on December 16, 2005 assessing $15,600 in administrative penalties with $3,120 deferred.

Information concerning any aspect of this order may be obtained by contacting A. Sunday Udoetok, Enforcement Coordinator, at (512) 239-0739, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coastal Bend Youth City, Docket No. 2005-0498- MWD-E on December 16, 2005 assessing $4,480 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 Mill Creek Water Supply Corporation, Docket No. 2005-0503-PWS-E on December 16, 2005 assessing $1,380 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 Texas Polymer Services, Inc., Docket No. 2005-0523- IWD-E on December 16, 2005 assessing $24,300 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 CSA Materials, Inc., Docket No. 2005-0524-WQ-E on December 20, 2005 assessing $2,700 in administrative penalties with $540 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator, at (512) 239-2680, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Sadler, Docket No. 2005-0544-MWD-E on December 16, 2005 assessing $7,360 in administrative penalties with $1,472 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sam Houston Area Council Boy Scouts of America, Docket No. 2005-0571-MWD-E on December 16, 2005 assessing $4,200 in administrative penalties with $840 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator, at (512) 239-3308, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Westwood Shores Municipal Utility District, Docket No. 2005-0597-MWD-E on December 16, 2005 assessing $4,050 in administrative penalties with $810 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator, at (512) 239-3308, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hooda Corporation, Inc. dba Esters Chevron, Docket No. 2005-0617-PST-E on December 16, 2005 assessing $7,600 in administrative penalties with $1,520 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.

A default order was entered regarding Elhamad Enterprises, Inc. dba JR Mini Mart, Docket No. 2005-0677-PST-E on December 16, 2005 assessing $9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Star, Inc. dba Southern Star Shrimp Farm, Docket No. 2005-0718-IWD-E on December 16, 2005 assessing $3,325 in administrative penalties with $665 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator, at (512) 239-3308, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Follett, Docket No. 2005-0738-MWD-E on December 16, 2005 assessing $14,700 in administrative penalties with $2,940 deferred.

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 Jesus Escobedo, Docket No. 2005-0786-LII-E on December 16, 2005 assessing $1,250 in administrative penalties with $250 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 City of Jasper, Docket No. 2005-0804-MWD-E on December 16, 2005 assessing $6,615 in administrative penalties with $1,323 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 BP Products North America Inc., Docket No. 2005- 0818-AIR-E on December 20, 2005 assessing $24,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator, at (512) 239-5025, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Walnut Springs, Docket No. 2005-0819- MWD-E on December 20, 2005 assessing $2,375 in administrative penalties with $475 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 Texas State Aquarium Association, Docket No. 2005- 0827-PST-E on December 16, 2005 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator, at (512) 239-2504, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Amoco Chemical Company, Docket No. 2005- 0829-AIR-E on December 16, 2005 assessing $4,131 in administrative penalties with $826 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enterprise NGL Pipelines, LLC, Docket No. 2005- 0873-AIR-E on December 16, 2005 assessing $5,100 in administrative penalties with $1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at (817) 588-5890, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wolf Hollow I, L.P., Docket No. 2005-0881-AIR-E on December 16, 2005 assessing $52,690 in administrative penalties with $10,538 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at (817) 588-5890, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hooks Independent School District, Docket No. 2005-0900-MWD-E on December 16, 2005 assessing $8,190 in administrative penalties with $1,638 deferred.

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 Celanese Ltd., Docket No. 2005-0927-AIR-E on December 16, 2005 assessing $3,750 in administrative penalties with $750 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 Stytze Van Der Meer dba Riggs Dairy, Docket No. 2005-0948-AGR-E on December 16, 2005 assessing $950 in administrative penalties with $190 deferred.

Information concerning any aspect of this order may be obtained by contacting J. 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 Five Nine Seven Limited Partnership dba Ramblewood Mobile Home Park, Docket No. 2005-0960-MWD-E on December 16, 2005 assessing $4,200 in administrative penalties with $840 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 City of Decatur, Docket No. 2005-0996-PWS-E on December 16, 2005 assessing $1,440 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dupre' Transport, Inc., Docket No. 2005-1024-PST-E on December 16, 2005 assessing $500 in administrative penalties with $100 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 Ricky Vasconsuelos, Docket No. 2005-1032-LII-E on December 20, 2005 assessing $625 in administrative penalties with $125 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 Tran, Tang, Docket No. 2005-1045-PST-E on December 16, 2005 assessing $6,120 in administrative penalties with $1,224 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator, at (512) 239-2136, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rancho Del Lago, Inc. dba Stallion Springs, Docket No. 2005-1055-PWS-E on December 16, 2005 assessing $2,858 in administrative penalties with $572 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda King-Zrubek, Enforcement Coordinator, at (512) 239-0824, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Limestone Marina, Inc. dba Limestone Marina & Campground, Docket No. 2005-1059-PWS-E on December 16, 2005 assessing $1,900 in administrative penalties with $380 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator, at (512) 239-0667, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Azteca Milling, L. P., Docket No. 2005-1080-IWD-E on December 16, 2005 assessing $970 in administrative penalties with $194 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela 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 Philip Sheridan dba Sheridan Water Supply, Docket No. 2005-1101-PWS-E on December 16, 2005 assessing $1,900 in administrative penalties with $380 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 Lake LBJ Municipal Utility District, Docket No. 2005-1201-PWS-E on December 16, 2005 assessing $1,290 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. 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 Huma Corporation dba Diary Mart 2, Docket No. 2005-1215-PST-E on December 16, 2005 assessing $6,120 in administrative penalties with $1,224 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 BMB Wood Recycling, Ltd., Docket No. 2005-1238- AIR-E on December 20, 2005 assessing $1,000 in administrative penalties with $200 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 Azimuth Energy, LLC, Docket No. 2005-1272-AIR-E on December 16, 2005 assessing $1,000 in administrative penalties with $200 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 A.H. Chaney, Inc., Docket No. 2005-1275-PST-E on December 16, 2005 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting J. 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 Rock Hill Water Supply Corporation, Docket No. 2005-1289-PWS-E on December 16, 2005 assessing $380 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mac Vilas, Enforcement Coordinator, at (512) 239-2557, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Metton America, Inc., Docket No. 2005-0448-IWD-E on December 16, 2005 assessing $15,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator, at (512) 239-4495, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richards Independent School District, Docket No. 2005-0796-MWD-E on December 16, 2005 assessing $9,800 in administrative penalties with $1,960 deferred.

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.

TRD-200600018
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 3, 2006

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Notice of District Petition

Notice mailed December 30, 2005

TCEQ Internal Control No. 09082005-D03; MERION 100, L.P. (Petitioner) filed a petition for creation of Walsh Ranch Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC 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, JPMorgan Chase Bank, N.A., 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 102 acres located in 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-05-10-13-10H5, effective October 13, 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 municipal, domestic, industrial, and commercial purposes; (2) acquire, construct, operate, and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, 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 $9,670,000.

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, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea información en Español, puede llamar 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200600017
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 3, 2006

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Notice of Meeting on February 23, 2006, in Corpus Christi, Texas, Concerning the Ballard Pits Site

The purpose of the meeting regarding the Ballard Pits site is to obtain public input and information concerning the proposal of the Ballard Pits site to the state registry of Superfund sites, the identification of potentially responsible parties, and the proposal of non-residential land use.

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code (the Act), Chapter 361, as amended, to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the April 29, 2005, issue of the *Texas Register* (30 TexReg 2583).

In accordance with the Act, §361.184(a), the commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the site is located. The commission hereby gives notice that the commission's executive director has determined the Ballard Pits site to be eligible for listing, and that the executive director proposes to list it on the state registry. The commission also gives notice in accordance with the Act, §361.1855, that it proposes a land use other than residential as appropriate for the site. The commission proposes a commercial/industrial land use designation. Determination of appropriate land use may impact the remedial investigation and remedial action for the site. The TCEQ is proposing a land use designation of commercial/industrial based on the existing land use of the property, as is prescribed in the Texas Risk Reduction Program rules in 30 TAC §350.53.

This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list this site was also published on January 13, 2006, in the *Corpus Christi Caller Times.*

The site proposed for listing is Ballard Pits, located at the end of Ballard Lane, west of its intersection with County Road 73, approximately four miles northwest of the Corpus Christi city limits. The pits are located on Lots 2 and 3 in Section 6 of the Wade Riverside Subdivision. The geographic coordinates of the East Pit are Latitude: 27.8865 Degrees North, Longitude: 97.6830 Degrees West. The geographic coordinates of the West Pit are Latitude: 27.8878 Degrees North, Lon-

gitude: 97.6842 Degrees West. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the commission to evaluate potential, relative risk to public health and the environment from releases or threatened releases of hazardous substances. The site description may change as additional information is gathered on the sources and extent of contamination.

The Ballard Pits are located on property owned by the C. F. Ballard Residuary Trust and/or Mamie Helen Ballard. Historically, the Ballard Sand and Gravel Company operated on these properties.

The pits have a combined surface area of approximately 63,000 square feet. There is a combined estimated volume of 14,000 cubic yards of material in the two pits. Previous sampling conducted by the Railroad Commission of Texas indicated volatile and semivolatile organic compounds, metals, and polychlorinated biphenyls in the pit material.

A public meeting will be held on February 23, 2006, at 7:00 p.m., in the cafeteria of Calallen High School, 4001 Wildcat Drive, Corpus Christi, Texas. The purpose of this meeting is to obtain additional information regarding the site relative to its eligibility for listing on the state registry, identify additional potentially responsible parties, and obtain public input and information regarding the appropriate use of land on which the site that is the subject of this notice is located. The public meeting is not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001.)

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., February 23, 2006, by Marshall Cedilote, Project Manager, Texas Commission on Environmental Quality, Remediation Division, MC 136, P. O. Box 13087, Austin, Texas 78711-3087 or facsimile to (512) 239-4814. The public comment period for this action will end at the close of the public meeting on February 23, 2006.

A portion of the record for this site, including documents pertinent to the executive director's determination of eligibility, is available for review at the Corpus Christi Public Library, Northwest Branch, 3202 McKinzie Road, Corpus Christi, Texas 78410, (361) 241-9329. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Information is also available regarding the state Superfund program on the world wide web at *www.tceq.state.tx.us/remediation/superfund/sites/index.html.* Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-2463. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call Bruce McAnally, TCEQ Community Relations, at (800) 633-9363, extension 2141.

TRD-200600008
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: January 3, 2006

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is 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 **February 13, 2006.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 13, 2006.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing.**

(1) COMPANY: Dexter Simpson dba Overton Road Chevron; DOCKET NUMBER: 2004-1971-PST-E; TCEQ ID NUMBERS: 75267 and RN102835766; LOCATION: 3926 East Overton Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); PENALTY: $3,150; STAFF ATTORNEY: Rebecca Davis, Litigation Division, MC 175, (512) 239-5487; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Moghul Empire Inc. dba Kolkhorst - Ali 12; DOCKET NUMBER: 2005-0891-PST-E; TCEQ ID NUMBERS: 29158 and RN102055096; LOCATION: 3324 Robinson Drive, Waco, McLennan County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to have required UST records maintained and readily accessible for inspection upon request by a representative of the TCEQ; 30 TAC §334.7(d)(3), by failing to amend its registration with 30 days of any change to reflect the current status of the UST system; 30 TAC §334.8(c)(5)(C), by failing to label according to the registration and self-certification form; 30 TAC §334.49(c)(2)(C) and (4), by failing to inspect the cathodic protection system at least once every 60 days and to test the system at least once every three years for proper operability; and 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month and to have the line leak detectors tested at least once per year for performance and operational

reliability; PENALTY: $12,705; STAFF ATTORNEY: Rebecca Davis, Litigation Division, MC 175, (512) 239-5487; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200600027
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: January 3, 2006

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

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 (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the 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 **February 13, 2006.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 13, 2006.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing.**

(1) COMPANY: Ennis West End, Inc. dba Speedmax 1; DOCKET NUMBER: 2004-0462-PST-E; TCEQ ID NUMBERS: 0043275 and RN101538007; LOCATION: 8445 Lancaster Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: retail gasoline station; RULES VIOLATED: 30 TAC §115.246(4) and (7)(A), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain at the facility and make immediately available for review upon request by an authorized representative of the City of Dallas' local air pollution control program, proof of attendance and successful completion of, by at least one facility representative, a training course approved by the Executive Director, for the operation and maintenance of the facility's Stage II vapor recovery system, and by failing to maintain documentation that every current facility employee has been made aware of the purposes and correct operating procedures of the system; PENALTY: $2,300; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Hurein S. Corporation dba BS Quick Stop Grocery 2; DOCKET NUMBER: 2004-1246-PST-E; TCEQ ID NUMBERS: 44259 and RN101866978; LOCATION: 16620 Farm-to-Market Road 1485, Conroe, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from operation of petroleum underground storage tanks (USTs); PENALTY: $3,270; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Uni-Wide Auto Imports, Inc.; DOCKET NUMBER: 2003-1522-MSW-E; TCEQ ID NUMBER: RN102999968; LOCATION: 9909 Airline Drive, Houston, Harris County, Texas; TYPE OF FACILITY: scrap tire processing facility; RULES VIOLATED: THSC, §361.112(a) and 30 TAC §§328.60(a), 328.63(b)(2), and 328.55(5), by failing to submit a scrap tire storage site registration application within ten days of changing the operation from tire processing to tire storage and by failing to obtain authorization to store more than 500 used or scrap tires on the ground or more than 2,000 used or scrap tires in enclosed or lockable containers; 30 TAC §328.63(d)(2), by failing to monitor tire stockpiles for vector control and apply appropriate vector control measures when needed, but not less than every two weeks; and 30 TAC §328.58(c), by failing to properly use and complete scrap tire manifests; PENALTY: $11,655; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Zak Business Inc. dba Kountry Mart; DOCKET NUMBER: 2004-1622-PST-E; TCEQ ID NUMBERS: 67946 and RN102434842; LOCATION: 18919 Highway 105, Cleveland, Liberty County, Texas; TYPE OF FACILITY: convenience store; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay overdue public health system fees; PENALTY: $5,250; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200600026
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: January 3, 2006

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Notice of Opportunity to Participate in Permitting Matters

A person may request to be added to a mailing list for public notices processed through the Office of the Chief Clerk for air, water, and waste permitting activities at the Texas Commission on Environmental Quality (TCEQ). You may request to be added to: (1) a permanent mailing list for a specific applicant name and permit number; and/or (2) a permanent mailing list for a specific county or counties.

Note that a request to be added to a mailing list for a specific county will result in notification of all permitting matters affecting that particular county.

To be added to a mailing list, send us your name and address, clearly specifying which mailing list(s) to which you wish to be added. Your written request should be sent to the TCEQ, Office of the Chief Clerk, Mail Code 105, P. O. Box 13087, Austin, TX 78711-3087.

Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-200600015
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 3, 2006

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Notice of Priority Groundwater Management Area Report Completion

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) in accordance with 30 TAC §294.41(i), gives notice of the completion, recommended action, and availability of the priority groundwater management area (PGMA) report entitled *Updated Evaluation for the Williamson, Burnet, and Northern Travis Counties Priority Groundwater Management Study Area*. In the report, the executive director concludes that the study area including all of Williamson, Burnet, and Northern Travis Counties should not be designated as a PGMA at this time because: 1) most of the identified water supply problems are localized and are not study area-wide problems; 2) the study area water supplies are of sufficient quality to meet intended and projected uses; and 3) the study area water purveyors have secured adequate water resources, or are presently working to secure adequate water resources, to meet all water demands for the next 25-year period. Because the data does not justify PGMA designation at this time, the executive director concludes that the local leadership, landowners, and citizens must determine if they desire to manage their groundwater resources. For their groundwater management consideration, the executive director concludes that either the creation of a multi-county groundwater conservation district (GCD) consisting of Williamson and Northern Travis Counties in the study area, or the addition of the two counties to the existing adjacent groundwater conservation districts would be the most feasible, economical, and practical options to achieve groundwater management in the study area.

EXECUTIVE SUMMARY OF REPORT

1990 Study

A 1990 study by the Texas Water Commission (Texas Commission on Environmental Quality predecessor agency) and the Texas Water Development Board (TWDB) determined that Williamson County and parts of Bastrop, Bell, Burnet, Milam, and Travis Counties did not meet the criteria to be designated as a "critical area" primarily because of the availability of surface water supplies to meet projected needs. By statutory definition, the critical groundwater problem criteria include shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawn, and contamination of groundwater supplies. However, the Texas Water Commission recommended that progress toward the conversion from groundwater to surface water usage should be reinvestigated at a later date, and if conversion plans were not being implemented or if groundwater conservation districts were not being formed, designation consideration for the area may need to be reconsidered. Since the 1990 study, the residents of Bastrop, Lee, Bell, Milam, and Burleson Counties have confirmed the creation of groundwater conservation districts. During the final phases of completing this report, the citizens of Burnet County also confirmed creation of a groundwater conservation district.

2005 Update Study

This PGMA update study summarizes and evaluates data and information that has been developed in Williamson, Burnet, and Northern Travis Counties over the past two decades to determine if the area is experiencing, or is expected to experience, within the next 25-year period, critical water supply problems. This report relies primarily on the data and supporting information for the 2001 Brazos G and Lower Colorado Regional Water Plans and the 2002 State Water Plan. The report also evaluates and uses information provided by stakeholders, other TWDB publications and data, data from the groundwater availability modeling for the northern segment of the Edwards aquifer and the Trinity/Woodbine aquifers, and natural resources issues identified by the Texas Parks and Wildlife Department. The report evaluates the authority and management practices of existing water management entities and purveyors within and adjacent to the study area, and makes recommendations on appropriate strategies needed to conserve and protect groundwater resources in the study area.

On July 26, 2004, TCEQ mailed a notice to approximately 280 water stakeholders in the study area to solicit comments and information about water supplies and groundwater availability, water level trends, water quality, and groundwater management. Most respondents from Williamson County stated that the study area should not have critical groundwater problems during the next 25 years and should not be designated as a priority groundwater management area. The Burnet Water Council commented that even though localized groundwater problems exist in the study area, the study area should not be designated as a tri-county PGMA due to different water use practices among the three counties.

The three-county study area gets water from the Colorado River and Brazos River Basin sources and groundwater. In 2000, 164,876 acre feet (acft) of water was used: surface water accounted for 83% (137,459 acft) of the water used, and groundwater accounted for 17% (27,417 acft). The primary sources of surface water supply in the study area are from the Highland Lakes, Colorado River, and water supplied through the Brazos River Authority. The Edwards and Trinity Group aquifers are the primary groundwater sources in Williamson and Northern Travis Counties, and the Ellenburger-San Saba, Hickory, Marble Falls, and Trinity Group aquifers are the primary groundwater sources for Burnet County. Other aquifers also supply groundwater to the study area.

The total quantity of water available for supply in the study area was estimated to be 345,209 acft in 2000, and is projected to decrease by 8% between 2000 and 2030. In 2000, municipal use accounted for 141,667 acft (86%) of the total amount of water used, up from 107,254 acft in 1995, and up from 93,541 acft in 1990. Of the amount of water used for municipal purposes in 2000, 22,646 acft (16%) was supplied by groundwater sources and 119,021 acft (84%) was supplied from surface water sources. Between the years 2000 and 2030, total population within the study area is projected to increase by approximately 91%. The total 2030 projected water demand for the three-county study area is anticipated to be 298,278 acre feet/year (acft/yr), an increase of 133,402 acft, or 81% over the 2000 water use. Municipal needs represent the largest demand for water in the study area and are projected to increase by approximately 124,667 acft over the 30-year planning period. Municipal needs account for 86% of the total water use in 2000 and increase to 89% of the total annual water demand for 2030, from 141,667 acft/yr to 266,334 acft/yr.

The water supply problems identified in the study area include lack of drought-reliable groundwater supplies, lack of firm supplies for some

municipal use and most mining use, localized water level declines, potential groundwater supply impacts from new mining or industrial wells, and removal of groundwater from aquifer storage to meet future demands. Most water supply concerns in the study area are addressed with surface water contract renewal, ongoing and continued water supply infrastructure expansion, and Carrizo-Wilcox aquifer groundwater development for import--all management strategies adopted by the 2001 Brazos G and Lower Colorado Regional Water Plans. There are no significant changes to the management strategies identified in the two 2005 Initially Prepared Regional Water Plans for the study area. During the last 15 years, the study area water purveyors have secured, and continue to secure, additional surface water resources while not increasing the amount of groundwater use. Using the water demand projections developed by the Brazos G and Lower Colorado Regional Water Planning Groups, the TWDB groundwater availability predictive models for the northern Edwards and Trinity/Woodbine aquifers do not project future significant regional water level decline to occur in the next 25-year period in the study area. Over the 50-year horizon, the model runs do predict that a gradual long-term water level decline will occur in the Pflugerville-Round Rock-Georgetown area.

The groundwater quality in the Edwards aquifer is generally good; however, the aquifer is highly vulnerable to surface contamination. The quality of water in the aquifer is directly affected by the total environment of the water, from its origin as rainfall to its ultimate discharge from wells and springs in the aquifer. Most of the dissolved matter in the groundwater is from the solution of substances in the rocks that compose the aquifer. The groundwater quality of the Trinity Group aquifer in the western portion of the study can be characterized as a calcium carbonate type water. Downdip to the eastern side of the study area, the water quality tends to decrease, becoming more saline. Water quality problems in the study area are best solved by coordinated efforts of state and local government, and water supply entities. The TCEQ Edwards Aquifer Protection Program rules in 30 TAC Chapter 213 address activities that could pose a threat to water quality in the Edwards aquifer and the surface streams that feed it into Williamson and Northern Travis Counties. Naturally occurring water quality problems in the Trinity Group aquifer, especially in the eastern side of the study area, are primarily addressed by blending this groundwater with surface water to achieve the drinking water standards.

Most of the identified water supply problems are localized and are not study area-wide problems. The available data indicates that study area water supplies are of sufficient quality to meet intended and projected uses. Further, study area water purveyors have secured adequate water resources or are presently working to secure adequate water resources to meet all water demands for the next 25-year period.

Recommendation on PGMA Designation

Based on the presently available information, the study area is not experiencing, and is not expected to experience, within the next 25-year planning horizon, critical groundwater problems. Therefore, the report contains a conclusion and recommendation that the Williamson, Burnet, and Northern Travis Counties study area should not be designated as a priority groundwater management area at this time.

Groundwater Management

The report evaluates the feasibility and practicability for groundwater management by a GCD, and concludes that managing and protecting the aquifers within the study area could be effectively accomplished through the establishment of a GCD. A GCD could benefit the study area by implementing Texas Water Code, Chapter 36 authorized monitoring, assessment, planning, permitting, and education programs, as well as through water well spacing and water quality protection rules. Groundwater management strategies to monitor, evaluate, and understand the aquifers sufficiently to establish programs to protect the riparian habitats fringing rivers, streams, and lakes, as well as protecting karst habitats, should be a priority in study area land-use planning processes. Implementing programs to minimize water level declines from concentrated pumping centers, and maintaining the existing spring flows in the study area and in counties adjacent to the study area would also facilitate the protection of natural resources. Cooperating and supporting existing multi-agency efforts such as the Balcones Canyonlands Preserve, Williamson County Karst Conservation Foundation, and TCEQ Edwards aquifer protection rules in Chapter 213 are also recommended to help conserve natural resources in the study area.

Because the study area's water supply concerns are mostly solved with implementation of water management strategies, PGMA designation is not recommended at this time and any GCD creation action would have to be locally initiated. The local leadership, landowners, and citizens must determine if they desire to manage their groundwater resources through a GCD. If their answer is yes, the citizens, on their own initiative, would need to consider the different methods and options available to create a GCD.

Most study area stakeholders have made it clear they do not believe a multi-county GCD would be practicable based on both hydrological conditions and other factors such as study area population densities. Burnet County stakeholders commented that they greatly preferred a Burnet County-only GCD, and in fact legislatively created and voted to confirm the creation of the Central Texas Groundwater Conservation District during the preparation of this report. The new Central Texas Groundwater Conservation District is sufficiently authorized to manage and protect the groundwater resources in Burnet County. Groundwater monitoring, assessment, planning, education, and permitting programs, as well as water well spacing and well closure programs are recommended for the district to manage the Trinity and Paleozoic-aged aquifers for the present citizens of the county and for future generations. Implementation of these types of programs will allow the district to identify and address water level declines in localized areas of heavy pumpage, provide safeguards from well interference from new groundwater users, and protect groundwater quality.

Nearly all of Northern Travis and Williamson Counties are within certificated water purveyor service areas. Through conservation programs and efforts to meet new demands with surface water sources, these entities can largely maintain their present groundwater systems. However, these types of entities do not have authority to control large scale groundwater pumpage for private purposes that could potentially impact a shared groundwater supply. The Clearwater Underground Water Conservation District in Bell County noted that the effectiveness of its groundwater management measures may be lessened if surrounding areas are not likewise managing the shared groundwater resource.

The Williamson County Water Visionary Committee does not support the creation of a GCD in Williamson County and noted that there is little public support in the county for such a district. TCEQ staff suggests that the most practicable method to achieve groundwater management for landowners who are concerned about groundwater quantity or quality impacts from the new users or demands may be to petition an adjacent GCD, either individually or collectively, to have their property added to the district.

In absence of a GCD, TCEQ staff suggests that the Commissioner's Court of Williamson County should follow through with its intent to adopt a formal Williamson County master water supply plan to address the supply, treatment, and distribution of water throughout the county to ensure that both rural and urban areas are efficiently and adequately supplied with water. Lastly, TCEQ staff suggests that a GCD consisting of Williamson and Northern Travis Counties would be a feasible

groundwater management entity only if there were public support for it to succeed.

Motion to Overturn the Executive Director's Decision

The completion of this report concludes that TCEQ actions regarding the Williamson, Burnet, and Northern Travis Counties PGMA update study area and the recommendations made in the report are primarily for the water stakeholders in the three-county area. Local decision-making and initiative would be required to exercise the groundwater management practices identified and recommended in the report. Anyone who disagrees with the executive director's determination that a PGMA should not be designated may file a motion with the TCEQ to overturn the determination in accordance with 30 TAC §50.39. The deadline to file such a motion is February 6, 2006.

REPORT AVAILABILITY

The executive director's report was filed on January 9, 2006, with TCEQ's Office of the Chief Clerk, located at 12100 Park 35 Circle, Building F, Room 1104, Austin, Texas. The report is available for public inspection at the Office of the Williamson County Clerk, located at 405 Martin Luther King, Jr. Street in Georgetown and the Williamson County Public Library, located at 808 Martin Luther King Jr. Street, and also in the public libraries found in the cities of Round Rock, Pflugerville, Florence, Liberty Hill, Leander, Cedar Park, and Taylor; the Office of Burnet County Clerk, located at 220 South Pierce Street and the Burnet County Public Library, located at 100 East Washington Street in Burnet; and the public libraries in Marble Falls and Bertram; the Office of Travis County Clerk, located at 5501 Airport Boulevard in Austin and the Austin Public Library, located at 800 Guadalupe Street in Austin, and the branch libraries located in the northern part of the city. The report is also available for inspection at the Barton Springs/Edwards Aquifer Conservation District, located at 1124-A Regal Row in Austin; Blanco-Pedernales Groundwater Conservation District, located at 304 East Main Street in Johnson City; Clearwater Undergroundwater Conservation District, located at 550 East 2nd Avenue in Belton; Hays Trinity Groundwater Conservation District, located at 14101 Highway 290 West, Building 100, Suite 212, in Austin; Lost Pines Groundwater Conservation District, located at 123 A Old Austin Highway; Post Oak Savannah Groundwater Conservation District, located at 310 East Avenue C in Milano; the TCEQ Region 11 Office, located at 1921 Cedar Bend Drive, Suite 150, in Austin; and on the commission's Web site at *http://www.tceq.state.tx.us/permitting/water_supply/groundwater/gw.html*. Copies of the report may be obtained by contacting Mr. Abiy Berehe at (512) 239-5480, by email at *aberehe@tceq.state.tx.us*, or by writing to Mr. Abiy Berehe, Texas Commission on Environmental Quality, Groundwater Planning and Assessment, MC 147, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200600028

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: January 4, 2006

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Notice of Proposed Water Quality General Permit Authorizing the Operation of Industrial Solid Waste Facilities That Receive Waste on a Commercial Basis for Discharge to a Publicly Owned Treatment Works

The Texas Commission on Environmental Quality (TCEQ) proposes to issue a general permit (Proposed General Permit No. WQG600000) authorizing the operation of existing industrial solid waste facilities which receive waste for treatment or storage on a commercial basis for discharge to publicly owned treatment works. The proposed general permit applies to the entire state of Texas. General permits are authorized by §26.040 of the Texas Water Code.

PROPOSED GENERAL PERMIT. The Executive Director has prepared a draft general permit that provides requirements and conditions for the authorization of existing industrial solid waste facilities that receive waste on a commercial basis for discharge to publicly owned treatment works. The Executive Director proposes to require regulated facilities to submit a Notice of Intent to obtain authorization for discharges.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's sixteen (16) regional offices and on the TCEQ website at: http://www.tceq.state.tx.us/permitting/water_quality/wastewater/general/WQ_general_permits.html.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P. O. Box 13087, Austin, TX 78711-3087 within 30 days from the date this notice is published in the *Texas Register*.

APPROVAL PROCESS. After the comment period, the Executive Director will consider all the public comments and prepare a response. The response to comments will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this general permit. The general permit will then be set for the Commissioners' consideration at a scheduled Commission meeting.

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific general permit; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at: www.tceq.state.tx.us.

Further information may also be obtained by calling Yvonna Pierce of the Water Quality Division at (512) 239-6922 or Lynn Bell of the Waste Permits Division at (512) 239-6603.

Si desea información en Español, puede llamar 1-800-687-4040.

TRD-200600014

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 3, 2006

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Notice of Water Quality Applications

The following notices were issued during the period of December 29, 2005 through January 3, 2006.

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.

CITY OF CELESTE has applied for a renewal of TPDES Permit No. 10146-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 94,800 gallons per day. The facility is located approximately 4000 feet west of U. S. Highway 69 and approximately one mile south-southwest of the intersection of U. S. Highway 69 and the Atchison-Topeka and Santa Fe Railway in Hunt County, Texas.

CITY OF DAINGERFIELD has applied for a renewal of TPDES Permit No. WQ0010499001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located approximately 5,500 feet southeast of the intersection of U. S. Highway 259, Farm-to-Market Road 11 and Farm-to-Market Road 49 in Morris County, Texas.

CITY OF DODD CITY has applied for a renewal of TPDES Permit No. WQ0010538001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 48,000 gallons per day. The facility is located approximately 2,200 feet southwest of the intersection of State Highway 897 and U. S. Highway 82, and approximately 2,500 feet southeast of the intersection of U. S. Highway 82 and Farm-to-Market Road 2077, southeast of Dodd City in Fannin County, Texas.

ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT has applied for a major amendment to Permit No. 13478-001, to increase the area irrigated from 51,200 square feet to 72,800 square feet. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day via nonpublic access unconventional subsurface effluent distribution system with a minimum area of 51,200 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at 9701 West 16th Street, Odessa, approximately 4,000 feet east of the intersection of West 16th Street and Moss Avenue in Ector County, Texas.

BETTY JOYCE JOHNSON has applied for a renewal of TPDES Permit No. 12893-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 17,500 gallons per day. The facility is located approximately 2 miles east of the intersection of Interstate Highway 20 and State Highway Loop 281 on Whitehurst Drive in Harrison County, Texas.

MSEC ENTERPRISES, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014638001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility will be located approximately 11,000 feet west of the intersection of Farm-to-Market Road 2854 and McCaleb Road on the northside of Farm-to-Market Road 2854 in Montgomery County, Texas.

RHODIA INC. which operates a guar processing plant, has applied for a renewal of TPDES Permit No. WQ0002537000, which authorizes the discharge of treated process wastewater, first flush storm water, domestic wastewater, and utility wastewater at a daily average flow not to exceed 1,300,000 gallons per day via Outfall 001 and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 201 Harrison Street, approximately 0.2 miles north of U. S. Highway 287, and approximately one mile east of the intersection of U. S. Highway 287 and U. S. Highway 70, in the City of Vernon, Wilbarger County, Texas.

CITY OF TEXARKANA has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 10374-005, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 18,000,000 gallons per day and authorizes the marketing and distribution of sewage sludge. The facility is located along the east bank of Days Creek; adjacent to the west side of State Line Road, approximately one mile south of the intersection of Phillips Lane and State Line Road in Bowie County, Texas.

UNIVERSITY OF TEXAS has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 13646-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,000 gallons per day. This application was submitted to the TCEQ on May 19, 2005. The facility is located approximately 10 miles southeast of the intersection of State Highway 166 and State Highway 118 at the McDonald Observatory on Mount Locke, approximately 10 miles northwest of Fort Davis in Jeff Davis 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.

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to CITY OF BIG WELLS to include additional requirements concerning disinfection in item 2 on page 2a of the permit. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 2,000 feet west of Farm-to-Market Road 1867 and 2,200 feet south of U. S. Highway 85 in Dimmit County, Texas.

TRD-200600013
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 3, 2006

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Notice of Water Rights Application

Notices issued December 29 through December 30, 2005:

Application No. 08-2410F; North Texas Municipal Water District (District), Applicant, P. O. Box 2408, Wylie, Texas 75098, seeks to amend Certificate of Adjudication No. 08-2410 pursuant to §§11.122, 11.042, and 11.046, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Certificate of Adjudication No. 08-2410 currently authorizes the District to impound 380,000 acre-feet of water in Lake Lavon, which is owned by the United States Army Corps of Engineers, and to divert and use from Lake Lavon: (a) 100,000 acre-feet of water per year for municipal purposes; (b) 4,000 acre-feet per year for industrial and municipal use; (c) 77,300

acre-feet of Trinity River Basin water per year for municipal purposes by over-drafting the firm yield of Lake Lavon when Lake Ray Hubbard is at or above maximum conservation level (435.5 feet msl) and spilling, or whenever additional water up to 77,300 acre-feet per year is supplied from Lake Texoma to Lake Lavon pursuant to Water Use Permit No. 5003; (d) 44,900 acre-feet of Trinity River Basin water per year for municipal purposes by over-drafting in excess of the firm yield of Lake Lavon during times when Lake Ray Hubbard is at or above maximum conservation level and spilling; (e) 57,214 acre-feet of water per year from Lake Lavon for municipal purposes consisting of a combination of over-drafting a maximum of 44,900 acre-feet of Trinity River Basin water and water supplied from Lake Chapman pursuant to Certificates of Adjudication Nos. 03-4797 and 03-4798; and (f) 71,882 acre-feet of water per year discharged into Lake Lavon from the District's Wilson Creek Wastewater Treatment Plant (WWTP). Certificate of Adjudication No. 08-2410 provides that the total consumptive use of water authorized by Certificates of Adjudication Nos. 08-2410, 03-4797, and 03-4798 and Water Use Permit No. 5003 for municipal purposes within the District's service area shall not exceed 234,514 acre-feet of water per year. If water is not transferred from Lake Chapman to Lake Lavon, the total consumptive use of water authorized by Certificate of Adjudication No. 08-2410 shall not exceed 222,200 acre-feet of water per year. In addition, Certificate of Adjudication No. 08-2410 authorizes the District to divert and consumptively use 4,000 acre-feet of water per year from Lake Lavon for municipal and industrial purposes. The Certificate contains several priority dates, special conditions, and diversion rates. Pursuant to Certificate of Adjudication No. 03-4798, District is also authorized to divert and use from Lake Chapman in the Sulphur River Basin, not to exceed 54,000 AF per year and pursuant to Certificate of Adjudication No. 03-4797 not to exceed 3,214 AF for use in its service area. Applicant seeks to amend Certificate of Adjudication No. 08-2410 to authorize: (a) The diversion and use of up to 206,600 acre-feet of water per year of the historical and projected future District Return Flows from sixteen (16) identified District or District customer-owned or operated WWTPs (District WWTPs), including a total volume of existing permitted District Return Flows of 159,075 acre-feet of which, the District proposes to divert and use 138,674 acre-feet per year of same, such that 30% of District Return Flows originating from water supplies within the Trinity River Basin will be left in the Trinity River to address the needs of downstream water rights and the environment; (b) The use of the bed and banks of the East Fork Trinity River and its tributaries within the Trinity River Basin to convey District Return Flows from the District WWTPs to the proposed diversion facilities downstream on the East Fork Trinity River, excluding the District Return Flows associated with District WWTPs that discharge directly into Lake Lavon or tributaries thereof (District Lake Lavon Return Flows); (c) The use of the bed and banks of Lake Lavon and its tributaries to convey District Lake Lavon Return Flows to the District's existing authorized points of diversion on Lake Lavon for subsequent diversion at the District's existing authorized diversion rate and for use by the District; (d) The diversion of District Return Flows at a maximum rate of 436 cfs (195,543 gpm) from the proposed diversion facilities to be located at any point within an approximate 1,200 foot reach of Stream Segment 0819 of the East Fork Trinity River between Latitude 32.642N, Longitude 96.484W and Latitude 32.635N, Longitude 96.485W; (e) The storage of not to exceed 4,497 acre-feet of District Return Flows in proposed off-channel storage facilities, including constructed wetlands; (f) The collection in and diversion of District Return Flows from the constructed wetlands in an amount equal to the amount diverted from the East Fork Trinity River, less conveyance losses associated with the temporary storage of such water in the constructed wetlands (estimated to be a maximum of 3,714 acre-feet per year), for conveyance by pipeline to Lake Lavon or a tributary to Lake Lavon; and (g) The conveyance of District Return Flows through a tributary of Lake Lavon and Lake Lavon for subsequent diversion at the District's authorized points of diversion on the perimeter of Lake Lavon at the District's existing authorized diversion rate, for use by the District. Treated effluent comprising District Return Flows will be discharged from the District WWTPs. For the description of the District WWTPs, view the complete notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. Applicant indicates that thirty percent (30%) of the District Return Flows originating from Trinity River Basin sources will be left in the Trinity River to address the needs of downstream water rights and the environment. Applicant indicates that there will be no losses associated with the conveyance of District Return Flows within Lake Lavon, to the District's existing diversion facilities on the perimeter of Lake Lavon, or within the East Fork Trinity River and its tributaries between the outfalls at District WWTPs and the District's proposed diversion facilities on the East Fork Trinity River. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The amendment application was received on April 20, 2004, and additional information was received November 3, 2004, December 21, 2004, and September 26, 2005. The application was reviewed by the Executive Director and determined to be administratively complete and filed with the Chief Clerk's Office on October 3, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5814A; TXU Mining Company LP, Energy Plaza, 1601 Bryan Street, Dallas, Texas 75201-3411, Applicant, seeks an amendment to a Water Use Permit pursuant to §11.122, Texas Water Code (TWC) and Texas Commission on Environmental Quality Rules 30 TAC §295.1, et seq. The existing Water Use Permit No. 5814 authorizes TXU Mining Company LP to store a maximum of not to exceed 2,114 acre-feet of water in 3 permanent on-channel reservoirs, resulting from mining activities in the Monticello Lignite Mining Area, on unnamed tributaries of Blundell Creek, tributary of Lake Monticello, tributary of Lake Bob Sandlin, tributary of Big Cypress Creek in the Cypress Basin in Franklin and Titus Counties, approximately 9 miles southwest of Mount Pleasant. The existing authorized impoundments are for non-exempt domestic and livestock purposes after mining activity ceases. The applicant seeks authorization to amend Water Use Permit No. 5814 to add a fourth proposed on-channel reservoir (Pond H-3R) resulting from mining activities on an unnamed tributary of Blundell Creek, tributary of Lake Monticello, tributary of Lake Bob Sandlin, tributary of Big Cypress Creek in the Cypress Basin within the Monticello Lignite Mining Area in Titus County, approximately 8.1 miles southwest of Mount Pleasant. Pond H-3R will cover an area of 42.2 acres, impound 1,144 acre-feet of water, and will be located at a bearing of S58.405 W, 16,600 feet from the southwest corner of the Joel Holbert Survey, Abstract No. A-262, in Titus County, also being located at Latitude 33.116 N and Longitude 95.098 W. After the initial filling of the reservoir, the impoundment will be maintained as a domestic and livestock reservoir with no right of diversion. Ownership of the mining rights in TXU Mining Company LP's Monticello Lignite Mining Area is held under multiple mining leases as evidenced by warranty deeds and leases filed with the TXU Mining Company LP's Surface Mining Permit Application in the Deed Records of Titus County, Texas. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and fees were received on September 29, 2005; and additional information was received on November 29, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on December 12, 2005. Written public comments and requests for a

public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. 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) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested 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 hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting 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, at 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.

TRD-200600016
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 3, 2006

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General Land Office

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey, Galveston County Art. 33.136 Sketch No. 34, submitted by William E. Merten, a Licensed State Land Surveyor, conducted in October 2005, locating the following shoreline boundary:

A survey of the line of mean high water along a portion of Dickinson Bayou in the W.K. Wilson Survey, Abstract Number 208, Galveston County, Texas.

For a copy of this survey contact Archives and Records, Texas General Land Office at (512) 463-5277.

TRD-200600034
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: January 4, 2006

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Department of State Health Services

List of Hospitals That Requested Certification by April 30, 2005, Under House Bill 4, 78th Texas Legislature

									Eligibility Criteria	
Hospitals (5)	City	County	Type	Owner	Control	Estimated Unreimbursed Costs of Charity Care	Net Patient Revenue (NPR)	Charity Care Costs As a Percent of NPR	Meets 8% of NPR Criterion for Certification	Meets All Criteria for Certification
Scott and White Memorial Hospital	Temple	Bell	NP	23	23	19,237,776	747,955,000	2.6	No	No
Valley Baptist Medical Center	Harlingen	Cameron	NP	23	23	14,461,846	276,724,595	5.2	No	No
Good Shepherd Medical Center	Longview	Gregg	NP	23	23	15,020,296	230,524,057	6.5	No	No
Marshall Regional Medical Center	Marshall	Harrison	NP	23	23	3,479,051	63,387,451	5.5	No	No
Johns Community Hospital	Taylor	Williamson	NP	23	23	409,289	14,879,333	2.8	No	No

Type = Ownership type. NP = Nonprofit, Hospital Tracking Database, Hospital Survey Unit, Center for Health Statistics, Texas Department of State Health Services (DSHS)

Owner = Ownership of hospital. Public: 12 (State), 13 (County), 14 (City), 15 (City-County), 16 (Hospital District), 17 (Hospital Authority); Nonprofit: 21 (Church), 23 (Other nonprofit); For-Profit: 31 (Individual), 32 (partnership), 33 (Corporation), Item F1, page 21, 2004 DSHS/AHA/THA Annual Survey of Hospitals

Control = Control of hospital. Public: 12 (State), 13 (County), 14 (City), 15 (City-County), 16 (Hospital District or Authority); Nonprofit: 21 (Church), 23 (Other nonprofit); For-Profit: 31 (Individual), 32 (partnership), 33 (Corporation), Item B1, page 3, 2004 DSHS/AHA/THA Annual Survey of Hospitals

Estimated Unreimbursed Costs of Charity Care Provided (audited data for FY 2004) = Total Billed Charges for Charity Care Provided X Cost to Charge Ratio - Total Payments Received for Charity Care Provided, Item L4, page 29, 2004 DSHS/AHA/THA Annual Survey of Hospitals (Note: Cost to Charge Ratio is calculated by dividing FY 2003 total patient care operating expenses by FY 2003 gross patient service revenue.)

Net Patient Revenue, Item E3a1, page 15, 2004 DSHS/AHA/THA Annual Survey of Hospitals
Charity Care Costs As a Percent of NPR = Estimated Unreimbursed Costs of Charity Care Provided divided by Net Patient Revenue times 100

Eligibility Criteria: Meets 8% of NPR Criterion for Certification, Meets All Criteria for Certification. To be eligible for certification a nonprofit hospital must provide (1) charity care in an amount equal to at least eight percent of net patient revenue, and (2) at least 40 percent of the charity care provided in the county in which the hospital is located. Since none of the hospitals qualified for the 8% of NPR criterion no further determination was necessary to check that hospitals also met the 40% of county charity care criterion.

Prepared By: Hospital Survey Unit, Center for Health Statistics, Texas Department of State Health Services, December 15, 2005

TRD-200600035
Cathy Campbell
General Counsel
Department of State Health Services
Filed: January 4, 2006

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Church Village Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Dunbar Middle School, 2901 23rd Street, Dickinson, Galveston County, Texas 77539, at 6:00 p.m. on February 1, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $2,100,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to VOA Texas Church Village, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 100-unit multifamily residential rental development located at 2902 Deats Road, Galveston County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941 Austin, Texas 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200600030
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 4, 2006

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Notice of Public Hearing for the Weatherization Assistance Program for Low-Income Persons 2006 State Plan/Application

The Texas Department of Housing and Community Affairs (TDHCA) will hold a public hearing to receive comments on the draft program year 2006 Texas Weatherization Assistance Program State Plan. Texas will receive an allocation of $6,765,294 for program year 2006. The allocation is provided to the state by the U.S. Department of Energy (DOE).

The public hearing will be held at 2:00 p.m. on Tuesday, February 7, 2006 in Room #116, State Insurance Building Annex, 221 East 11th Street, Austin, Texas. (The State Insurance Building Annex is situated directly across the street from the Capitol Visitor's Center, on the southeast corner of East 11th and San Jacinto streets.) At the hearing, a representative from TDHCA will describe changes to the Weatherization Assistance Program (WAP) and the proposed use of the United States Department of Energy funds for program year 2006, which will be for the period of April 1, 2006 to March 31, 2007.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the program year 2006 Texas Weatherization Assistance Program State Plan and Application. Written comments from those who cannot attend the hearing in person may be provided by the close of business at 5:00 p.m. on February 7, 2006, to Lolly Herrera, Senior Planner, Energy Assistance Section, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711 or by electronic mail to Lolly.Herrera@tdhca.state.tx.us or by fax to (512) 475-3935. A copy of the proposed Draft Plan may be obtained, after January 27, 2006, through TDHCA's web site, http://www.tdhca.state.tx.us/ea.htm or by calling Ms. Herrera at (512) 475-0471 or by writing to Ms. Herrera at the TDHCA address given above.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Lolly Herrera, (512) 475-0471 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-200600041
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 4, 2006

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by EXPRESS SCRIPTS INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Tempe, Arizona

Application to change the name of THE CENTRAL NATIONAL LIFE INSURANCE COMPANY OF OMAHA to RENAISSANCE LIFE & HEALTH INSURANCE COMPANY OF AMERICA, a foreign life, accident and/or health company. The home office is in Okemos, Michigan.

Application to change the name of SOUTHWEST HOME LIFE INSURANCE COMPANY to JEFFERSON LIFE INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Dallas, Texas.

Application to change the name of HIGHMARK LIFE INSURANCE COMPANY to HM LIFE INSURANCE COMPANY, a foreign fire

and/or casualty company. The home office is in Pittsburgh, Pennsylvania.

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-200600042
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: January 4, 2006

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of NETWORK ADMINISTRATORS INSURANCE AGENCY, INC. (using the assumed name of GSA INSURANCE AGENCY CO.), a foreign third party administrator. The home office is PORT JEFFERSON, NEW YORK.

Application for admission to Texas of HEALTH NETWORK AMERICA, INC. (using the assumed name of HNA/TRIVERIS, INC.), a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200600036
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: January 4, 2006

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Texas Lottery Commission

Instant Game Number 643 "American Idol"

1.0. Name and Style of Game.

A. The name of Instant Game Number 643 is "AMERICAN IDOL." The play style is "key number match with auto win."

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 643 shall be $2.00 per ticket.

1.2. Definitions in Instant Game Number 643.

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, WIN SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000 and $20,000.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears 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. 643 - 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
WIN SYMBOL	WIN ALL
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$20,000	20 THOU

E. Retailer Validation Code--Three letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 643 - 1.2E

CODE	PRIZE
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. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four digit Security Number placed randomly within the Serial Number. The remaining nine 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 $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize--A prize of $50.00 or $200.

I. High-Tier Prize--A prize of $2,000 or $20,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (643), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 643-0000001-001.

L. Pack--A pack of "AMERICAN IDOL" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two. Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A - B configuration.

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 "AMERICAN IDOL" Instant Game Number 643 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 "AMERICAN IDOL" Instant Game is determined once the latex on the ticket is scratched off to expose 22 Play Symbols. If a player matches any of the YOUR NUMBERS play symbols to either of the IDOL NUMBERS play symbols the player wins the prize indicated for that number. If a player reveals a "WIN" play symbol the player wins all ten prizes indicated automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 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 more than one pair of non-winning prize symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. No duplicate IDOL NUMBERS play symbols on a ticket.

E. The "WIN" play symbol will only appear as dictated by the prize structure and only once on a ticket.

F. When the "WIN" play symbol appears, there will be no occurrence of a YOUR NUMBER play symbol matching either IDOL NUMBER play symbol.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 5 and $5).

2.3. Procedure for Claiming Prizes.

A. To claim an "AMERICAN IDOL" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $200 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, 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 $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim an "AMERICAN IDOL" Instant Game prize of $2,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming an "AMERICAN IDOL" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "AMERICAN IDOL" 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 "AMERICAN IDOL" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8. Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment

to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game Number 643. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 643 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,280,160	7.87
$4	695,520	14.49
$5	120,960	83.33
$10	131,040	76.92
$20	60,480	166.67
$50	44,520	226.42
$200	8,232	1,224.49
$2,000	50	201,600.00
$20,000	13	775,384.62

*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 4.31. 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 Number 643 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 Number 643, 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-200506128
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 29, 2005

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Instant Game Number 644 "Amazing 8's"

1.0. Name and Style of Game.

A. The name of Instant Game Number 644 is "AMAZING 8'S." The play style is "key number match."

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 644 shall be $5.00 per ticket.

1.2. Definitions in Instant Game Number 644.

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, $8.00, $10.00, $20.00, $40.00, $80.00, $400, $1,000, $5,000, $50,000, 1, 2, 3, 4, 5, 6, 7, 8, 9, 01, 02, 03, 04, 05, 06, 07, 08, 09 and 10.

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. 644 - 1.2D]

Figure 1: GAME NO. 644 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$8.00	EIGHT$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$80.00	EIGHTY
$400	FOUR HUN
$1,000	ONE THOU
$5,000	FIV THOU
$50,000	50 THOU
1	ONE
2	TWO
3	THREE
4	FOUR
5	FIVE
6	SIX
7	SEVEN
8	EIGHT
9	NINE
01	ONE
02	TWO
03	THREE
04	FOUR
05	FIVE
06	SIX
07	SEVEN
08	EIGHT
09	NINE
10	TEN

E. Retailer Validation Code--Three letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 644 - 1.2E

CODE	PRIZE
FIV	$5.00
EGT	$8.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will

only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four digit Security Number placed randomly within the Serial Number. The remaining nine 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 $5.00, $8.00, $10.00 or $20.00.

H. Mid-Tier Prize--A prize of $40.00, $80.00 or $400.

I. High-Tier Prize--A prize of $1,000, $5,000 or $50,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (644), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 644-0000001-001.

L. Pack--A pack of "AMAZING 8'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one. 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. Please note the books will be in an A - B configuration.

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 "AMAZING 8'S" Instant Game Number 644 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 "AMAZING 8'S" Instant Game is determined once the latex on the ticket is scratched off to expose 30 Play Symbols. A prize winner in the "AMAZING 8'S" Instant Game is determined once the latex on the ticket is scratched off to expose 30 Play Symbols. In the GAME 1, if a player reveals 3 matching prize amounts, the player wins that prize amount. In the GAME 2, if the player reveals 2 EIGHT SYMBOLS, the player wins the prize indicated. In the GAME 3, if the player reveals 3 EIGHT SYMBOLS in a row, column or diagonal, the player wins the prize indicated. In the GAME 4, if the player matches the LUCKY NUMBER to any of YOUR NUMBERS, the player wins the prize indicated. 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 30 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 30 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 30 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 30 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: No ticket will contain 2 sets of 3 matching prize amounts.

C. GAME 1: No prize amount will appear more than 3 times within a game.

D. GAME 1: This play area consists of 6 prize symbols.

E. GAME 2: This play area consists of 2 play symbols and 1 prize symbol.

F. GAME 2: Non-winning tickets will not contain 2 identical symbols.

G. GAME 2: Non-winning tickets may contain 1 EIGHT SYMBOL.

H. GAME 2: The EIGHT SYMBOL will never appear as one of the prize symbols.

I. GAME 3: No ticket will contain 3 or more matching symbols other than the EIGHT SYMBOL.

J. GAME 3: Winning tickets can only win by getting 3 EIGHT SYMBOLS in the same row, column or diagonal.

K. GAME 3: There will never be 4 EIGHT SYMBOLS in all 4 corners.

L. GAME 4: Non-winning prize symbols will not match a winning prize symbol on a ticket.

M. GAME 4: Both winning and non-winning tickets will not contain more than one set of 2 like prize symbols except on multiple wins.

N. GAME 4: No duplicate non-winning YOUR NUMBERS on a ticket.

O. GAME 4: YOUR NUMBERS will never equal the corresponding prize symbol.

2.3. Procedure for Claiming Prizes.

A. To claim an "AMAZING 8'S" Instant Game prize of $5.00, $8.00, $10.00, $20.00, $40.00, $80.00 or $400, 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, $80.00 or $400 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 an "AMAZING 8'S" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming an "AMAZING 8'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "AMAZING 8'S" 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 "AMAZING 8'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not

claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8. Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game Number 644. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 644 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	800,000	7.50
$8	320,000	18.75
$10	400,000	15.00
$20	100,000	60.00
$40	100,000	60.00
$80	31,950	187.79
$400	2,000	3,000.00
$1,000	200	30,000.00
$5,000	16	375,000.00
$50,000	4	1,500,000.00

*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 3.42. 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 Number 644 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 Number 644, 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-200506127
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 29, 2005

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Instant Game Number 645 "Cash to Boot"

1.0. Name and Style of Game.

A. The name of Instant Game Number 645 is "CASH TO BOOT." The play style is "key number match with auto win."

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 645 shall be $2.00 per ticket.

1.2. Definitions in Instant Game Number 645.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, BOOT SYMBOL,

$1.00, $2.00, $5.00, $10.00, $20.00, $25.00, $50.00, $250, $2,500 and $25,000.

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. 645 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
BOOT SYMBOL	WINX10
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$250	TWO FTY
$2,500	25 HUND
$25,000	25 THOU

E. Retailer Validation Code--Three letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

[Figure 2: GAME NO. 645 - 1.2E]

Figure 2: GAME NO. 645 - 1.2E

CODE	PRIZE
TWO	$2.00
FIV	$5.00
TEN	$10.00
TWL	$12.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four digit Security Number placed randomly within the Serial Number. The remaining nine 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 $2.00, $5.00, $10.00, $12.00 or $20.00.

H. Mid-Tier Prize--A prize of $25.00, $50.00 or $250.

I. High-Tier Prize--A prize of $2,500 or $25,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (645), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 645-0000001-001.

L. Pack--A pack of "CASH TO BOOT" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 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 "CASH TO BOOT" Instant Game Number 645 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH TO BOOT" Instant Game is determined once the latex on the ticket is scratched off to expose 22 Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either of the WINNING NUMBERS play symbols the player wins prize shown for that number. If a player reveals a BOOT play symbol the player wins 10 times the prize shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 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 more than one pair of non-winning prize symbols on a ticket.

C. No duplicate non-winning Your Numbers play symbols on a ticket.

D. No duplicate Winning Numbers play symbols on a ticket.

E. The boot play symbol will only appear as dictated by the prize structure and only once on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

2.3. Procedure for Claiming Prizes.

A. To claim a "CASH TO BOOT" Instant Game prize of $2.00, $5.00, $10.00, $12.00, $20.00, $25.00, $50.00 or $250, 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 $25.00, $50.00 or $250 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH TO BOOT" Instant Game prize of $2,500 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH TO BOOT" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASH TO BOOT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CASH TO BOOT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8. Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game Number 645. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 645 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,093,440	7.35
$5	225,120	35.71
$10	112,560	71.43
$12	64,320	125.00
$20	112,560	71.43
$25	32,160	250.00
$50	21,239	378.55
$250	3,350	2,400.00
$2,500	54	148,888.89
$25,000	6	1,340,000.00

*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 4.83. 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 Number 645 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 Number 645, 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-200506129

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 29, 2005

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North Central Texas Council of Governments

Notice of Requests for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provision of Government Code 2254.

Through its regional solid waste management program, NCTCOG intends to seek professional consulting services for two (2) different studies to assist with implementation of the SEE Less Trash Regional Solid Waste Management Plan:

• Phase III: C&D Material Recovery Facility Study

• Commercial Recycling Rate Study

Contract Award Procedures: Each project will have an oversight subcommittee that will recommend the firm selected to perform each study. These oversight subcommittees will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposal (RFP). The NCTCOG Executive Board will review the recommendations made by these subcommittees, and if found acceptable, will issue contract awards.

A consultant briefing will be held on Wednesday, February 1, 2006, at 1:30 p.m., in the NCTCOG Offices. Copies of the RFP will be available at NCTCOG's website: http://www.nctcog.org/envir/SEELT/index.asp

Closing date: Proposals must be submitted no later than the close of business on Monday, February 13, 2006, to the North Central Texas Council of Governments, Environment and Development Department, 616 Six Flags Drive, Suite 200, Arlington, Texas 76011, or P.O. Box 5888, Arlington, Texas 76005-5888. Questions may be directed to Kathleen Graham, NCTCOG Senior Environmental Planner, at (817) 695.2917, or kgraham@nctcog.org.

TRD-200600025
Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: January 3, 2006

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Panhandle Regional Planning Commission

Invitation for Bids

The Panhandle Regional Planning Commission (PRPC) is soliciting bids to purchase thirty (30) personal computers (PCs) and related equipment. To comply with our funding agency's requirements, PRPC will only accept bids for PCs produced by:

* Tier1/Tier2 manufacturers as designated by the Gartner Group. Tier 1/Tier 2 manufacturers include: Acer, AST, Compaq, Digital, Dell, Gateway, HP, IBM, Micron, NEC, Unisys and Zenith Data Systems, or

* Vendors listed on the Texas Building and Procurement Commission's (TBPC) Centralized Master Bidders List (CMBL)

A copy of the Invitation for Bids can be obtained by contacting Leslie Hardin, PRPC's Workforce Development Facilities Coordinator at (806) 372-3381 or lhardin@prpc.cog.tx.us. Proposals must be received at PRPC by 3:00 p.m. on January 20, 2006.

TRD-200600010
Leslie Hardin
Facilities Coordinator
Panhandle Regional Planning Commission
Filed: January 3, 2006

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Invitation for Bids

The Panhandle Regional Planning Commission (PRPC) is soliciting bids to purchase rack mount server hardware, software and related equipment. A copy of the Invitation for Bids can be obtained by contacting Leslie Hardin, PRPC's Workforce Development Facilities Coordinator at (806) 372-3381 or lhardin@prpc.cog.tx.us. Proposals must be received at PRPC by 3:00 p.m. on January 20, 2006.

TRD-200600011
Leslie Hardin
Facilities Coordinator
Panhandle Regional Planning Commission
Filed: January 3, 2006

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Invitation for Bids

The Panhandle Regional Planning Commission (PRPC) is soliciting bids for a contract to provide Broadband Internet service to the Panhandle region's Texas Workforce Centers. The Texas Workforce Center facilities require Broadband Internet presence with static IP only (excluding email service and telephony) in as many of the following eight locations as possible:

* Guaranteed speed no less than 2.5Mbps both up and down for the following:

1) Amarillo, 1206 W. 7th, 79101

2) Amarillo, 905 S. Fillmore, Suite 610, 79101

3) Borger, 901 Opal, Room 102, 79007

4) Hereford, 121 W. Park Ave., 79045

* Guaranteed speed no less than 1Mbps both up and down for the following:

5) Childress, 210 Commerce Street, 79201

6) Dumas, 500 East 1st, 79029

7) Pampa, NBC Plaza, 1224 N. Hobart, Suite 101, 79065

8) Tulia, 310 W. Broadway Ave., 79088

A copy of the Invitation for Bids can be obtained by contacting Leslie Hardin, PRPC's Workforce Development Facilities Coordinator at (806) 372-3381 or lhardin@prpc.cog.tx.us. Bids must be received at PRPC by 3:00 p.m. on January 20, 2006.

TRD-200600012
Leslie Hardin
Facilities Coordinator
Panhandle Regional Planning Commission
Filed: January 3, 2006

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Request for Proposals

The Panhandle Regional Planning Commission (PRPC) is requesting proposals for a contract to provide network/telephone drop installation and verification service to the Panhandle region's Texas Workforce Centers. A copy of the Request for Proposals can be obtained by contacting Leslie Hardin, PRPC's Workforce Development Facilities Coordinator at (806) 372-3381 or lhardin@prpc.cog.tx.us. Proposals must be received at PRPC by 3:00 p.m. on January 20, 2006.

TRD-200600009
Leslie Hardin
Facilities Coordinator
Panhandle Regional Planning Commission
Filed: January 3, 2006

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Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 23, 2005, for a state-issued certificate of franchise authority (CFA), pursuant to Public Utility Regulatory Act (PURA) §§66.001 - 66.016. A summary of the application follows.

Project Title and Number: Application of NTS Communications, Incorporated for a State-Issued Certificate of Franchise Authority, Project Number 32218 before the Public Utility Commission of Texas.

Applicant intends to provide cable and video service. The requested CFA service includes the municipal boundaries of the City of Wolfforth, Texas; portions of the City of Lubbock, Texas; the unincorporated areas of Lubbock County as described in the application, and the following subdivisions: The Living with Horses subdivision; The Buena Vista subdivision; The Windsor subdivision; The Highland Oaks subdivision; The Kemper Estates subdivision; The Indiana South subdivision; The Timber Ridge subdivision; The Ridge View subdivision; and The Sandy Maria subdivision.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32218.

TRD-200506133
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 29, 2005

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 28, 2005, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of FEC Communications, LLP for a State-Issued Certificate of Franchise Authority, Project Number 32222 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service includes the following counties: Collin, Hunt, Kaufman, and Rockwall.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32222.

TRD-200600019
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 3, 2006

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Notice of a Petition for Declaratory Order

On December 15, 2005, Tenaska Power Services Company d/b/a TPS III (TPS) filed a petition to obtain a declaratory order interpreting P.U.C. Substantive Rule §25.43(n), which provides for the transition of customers to service provided by the provider of last resort (POLR), as well as associated rules as they affect the transition to POLR service.

TPS explained that one central issue involves a POLR's ability to obtain proprietary customer information, particularly historical usage, for customers that will be switched to the POLR but where the switch has not occurred and the POLR is not yet the retail electric provider (REP) of record. TRS reported that concerns have arisen about potential legal restrictions created by P.U.C. Substantive Rule §25.472 (hereinafter "Privacy Rules"), which some market participants believe may prohibit transmitting customer data to POLRs in any manner other than an electronic Texas SET transaction initiated by the POLR submitting an electronic switch request to the Electric Reliability Council of Texas (ERCOT). TPS has asked the Commission to clarify that P.U.C. Substantive Rule §25.43(n), coupled with P.U.C. Substantive Rules §25.272(b)(5) and §25.272(g)(l)(D), collectively remove the "Privacy of Customer Information" restrictions on disclosure of proprietary customer information otherwise required under the Privacy Rules by any party to the POLR.

TPS also asked the Commission to clarify that ERCOT, in establishing procedures for switching a customer to POLR service, lacks authority to compel a POLR to provide retail electrical service in a manner not authorized by or contrary to its Commission-approved terms of service agreement (TOSA). In particular, TPS requested the Commission to make clear that a POLR cannot be compelled to serve customers in customer classes other than those for which the POLR has been authorized by the Commission to provide service. Further, TPS raised concerns regarding its ability to require a customer to secure service by providing a cash deposit based on historic usage data, as is allowed under its Commission-approved TOSA, when the historic usage data is not timely provided.

TPS requested that the Commission issue an Order declaring that P.U.C. Substantive Rules §§25.43(n), 25.272(b)(5) and 25.272(g)(l)(D) allow REPs, ERCOT, and TDSPs working to transition a customer to POLR service to release to the POLR all relevant proprietary customer information, including historic customer usage data, from the time a POLR receives notice that it will be required to serve the customer, and further, that a POLR will not be compelled by ERCOT to deviate from its TOSA to serve customers not eligible for service under that TOSA, or held in violation of Commission rules, or ERCOT Protocols or Retail Market Guides for failure to deviate from its TOSA.

Persons wishing to comment or intervene in this proceeding should contact the Public Utility Commission of Texas. The commission's address is P.O. Box 13326, Austin, Texas 78711-3326. Commission phone numbers are (512) 936-7120 or toll-free 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Project Number 32174.

TRD-200506131
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 29, 2005

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Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 21, 2005, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of Absolute Electric, Incorporated, doing business as Absolute Power I (API) for Retail Electric Provider (REP) certification, Docket Number 32199 before the Public Utility Commission of Texas.

Applicant's requested service area by geography comprises the entire state of Texas.

Persons wishing 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 January 20, 2006. 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 32199.

TRD-200506135
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 29, 2005

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On December 22, 2005, Cox Texas Telcom 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 60685. Applicant intends to reflect a change in ownership/control.

The Application: Application of Cox Texas Telcom for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32207.

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 January 18, 2006. 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 32207.

TRD-200506136
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 29, 2005

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on December 22, 2005, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §14.101 and §66.017 (Vernon 1998 & Supp. 2005) (PURA).

Docket Style and Number: Joint Application of Cap Rock Energy Corporation and Cap Rock Holding Corporation Regarding Acquisition of Stock, Docket Number 32185.

The Application: On December 22, 2005, Cap Rock Energy Corporation (Cap Rock) and Cap Rock Holding Corporation (CRH) (collectively, Applicants) filed a joint application for approval of the acquisition by CRH of 100% of the issued and outstanding common stock of Cap Rock pursuant to the terms of the Agreement and Plan of Share Exchange (Agreement) dated November 4, 2005.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 32185.

TRD-200600021
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 3, 2006

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 21, 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 Exigo Office, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 32191 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company, Verizon Communications and Sprint.

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 January 18, 2006. 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 32191.

TRD-200506134
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 29, 2005

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 28, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of YMax Communications Corp. for a Service Provider Certificate of Operating Authority, Docket Number 32224 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, long distance service and VOIP services.

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 January 16, 2006. 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 32224.

TRD-200600022
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 3, 2006

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Notice of Application for Waiver from Requirements

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 22, 2005 for waiver from the requirements in P.U.C. Substantive Rule §26.54(b)(3) and §26.54(b)(4)(C). A summary of the application follows.

Docket Title and Number: Application of Southwest Texas Telephone Company for an Extension of Waiver from Requirements in P.U.C. Substantive Rule §26.54(b)(3) and §26.54(b)(4)(C); Docket Number 32206.

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. 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 32206.

TRD-200506132
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 29, 2005

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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 December 22, 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 about January 11, 2006.

Docket Title and Number: Application of Kerrville Telephone Company for Approval of Long Run Incremental Cost Study for Three-Way Conference/Transfer Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 32211.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the Long Run Incremental Cost Study referencing Docket Number 32211. 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 32211.

TRD-200600020
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 3, 2006

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Texas A&M University, Board of Regents

Request for Proposals

The Texas A&M University System (A&M System) announces a Request for Proposals (RFP) to provide a Group Long Term Care Insurance plan, a Group Accidental Death and Dismemberment Insurance plan and a Group Long Term Disability Insurance plan. Firms are invited to submit proposals for any or all of the plans mentioned above. The RFP solicits proposals for plans beginning September 1, 2006.

Firms wishing to respond to this request must have superior, recognized expertise and specialize in administering benefit plans of the types listed above.

The deadline for receipt of proposals in response to this request is 4:00 p.m. CST on February 14, 2006.

The A&M System reserves the right to accept or reject any or all proposals submitted and is under no legal requirement to execute a resulting contract on the basis of this advertisement. The A&M System intends to use responses as a basis for further negotiations of specific project details and will base its choice on cost, demonstrated competence, superior qualifications, and evidence of conformance with the RFP criteria. The A&M System shall not designate and will not pay commissions to an Agent of Record or a commissioned representative.

The RFP does not commit the A&M System to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the A&M System to award a contract or to pay any costs incurred in the preparation of a response. The A&M System specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the A&M System deems it to be in its best interest.

Beginning January 13, 2006, RFP instructions providing detailed information regarding the project can be downloaded from http://sago.tamu.edu/shro/rfp.asp or written requests can be faxed to Ellen Gerescher, System Human Resource Office, The Texas A&M University System, FAX (979) 458-6190 (physical address: 200 Technology Way, Suite 1281, College Station, Texas 77845-3424). For questions or further information regarding this notice, contact Ms. Gerescher by facsimile or by e-mail at egerescher@tamu.edu.

TRD-200600040
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: January 4, 2006

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Services

In the December 16, 2005, issue of the *Texas Register* (30 TexReg 8507), the Texas Department of Transportation published an Aviation Division - Request for Proposal for Professional Services. The project description has been clarified. The following public notice is re-published with the clarification.

The Aviation Division of the Texas Department of Transportation (TxDOT) intends to enter into one or two contracts with prime provider(s) pursuant to Government Code, Chapter 2254, Subchapter A, for geotechnical and quality assurance testing services and for resident project representation (RPR).

TxDOT CSJ No.: **06AVNSERV**

Clarification of Project Description and Work to be Performed:

The Aviation Division of TxDOT intends to enter into one or two contracts with prime provider(s) to perform geotechnical investigation, quality assurance testing, and RPR services for various general aviation airport construction projects across the state. Geotechnical investigation, quality assurance testing and RPR services are one contract. The services above will not be separated. The construction general contractor performing services on these projects must provide their own independent quality control testing and is not a part of this proposal.

Projects requiring these services are typically designed by the Aviation Division and each usually have total construction costs of under $300,000. There are generally about 20 of these projects that require testing services each year, and 10 requiring RPR services.

Testing services may include, but are not limited to: asphaltic concrete, portland cement concrete, plant inspection and testing, soil exploration, and geotechnical testing.

RPR services include, but are not limited to: attend conferences, review schedules, review submittals, review work, reject defective work, inspections and tests, maintain records, submit weekly progress reports, approve payments, and conduct wage rates interviews.

The contracted firm will be required to provide on-demand testing and RPR services with 12 to 24 hours advance notification throughout the state.

Selection Requirements:

The proposing firm must demonstrate that a professional engineer registered in Texas will sign and seal the work to be performed under the contract. The proposing firm must demonstrate a familiarity with TxDOT and Federal Aviation Administration (FAA) materials and testing procedures. The proposing firm must also provide a short resume of proposed RPR candidates listing their experience in airport related construction.

Employment Law:

A prime provider or sub-provider currently employing former TxDOT employees must be aware of the revolving door employment laws, including Government Code, Chapter 572 and §2252.901.

Historically Underutilized Business (HUB) Goal/Disadvantaged Business Enterprise (DBE):

The assigned HUB/DBE goal for participation in the work to be performed under this contract will be race neutral. Services for HUB or DBE will be reported dependent upon the funding utilized for each project.

Selection Criteria:

TxDOT will evaluate proposals using the following criteria:

1) Project understanding and approach, including utilization of professional engineer services. 25 points.

2) The firm's experience with similar projects and ability to provide testing and RPR services. 25 points.

3) Ability to perform in a timely manner and provide on-demand services. 25 points.

4) Ability to understand and meet FAA requirements for specified material testing and provide competent RPR oversight. 25 points.

Selection Procedure:

The successful firm(s) will be selected on the basis of a proposal of no more than four (4) typed, 8-1/2 x 11 inch single sided pages, using no smaller than a 12 pitch font size. The proposal will systematically address the four criteria listed above and data provided below, and will be scored accordingly.

At a minimum, the proposal must include:

1) The RFP number.

2) The name of the firm, address and contact information.

3) The qualifications and experience of key staff, subcontractors and anyone assigned to oversee the work.

Contract Terms:

Each total contract, whether executed with one or two firms, shall not exceed **$250,000**. For each individual construction project, the selected firm will submit a proposed schedule and price for testing based on the project materials quantities provided by the TxDOT Aviation Project Manager for approval. TxDOT Project Manager may add or delete specific testing requirements based on the complexity and/or budget constraints of each individual project. RPR estimated hours will be provided by the TxDOT Aviation Project Manager based on the complexity and/or budget constraints of each individual construction project.

Compensation for individual projects shall be based on costs for required tests that are commensurate with industry standards, plus travel expenses, and per diem when appropriate. On occasion, if mutually beneficial, a lump sum fee for a project may be allowed. A testing schedule and not-to-exceed fee shall be negotiated prior to commencement of services for any project. Compensation for RPR is an hourly rate per hour. Such payment shall include all direct salary costs, indirect salary costs, fringe benefits, overhead, travel and subsistence, telephone and postage, field office expenses, printing and reproduction costs, any other payroll costs, and profit.

This contract shall be in effect for **24 months** after execution and can be extended by written amendment agreed to by both parties for an additional 24 months.

Deadline:

Five completed, unfolded copies of the proposal must be postmarked by U. S. Mail by midnight Tuesday, January 17, 2006. Mailing address is: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. Wednesday, January 18, 2006. Overnight address is: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. Wednesday, January 18, 2006. Hand delivery address is: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Please mark the envelope of the proposal to the attention of Amy Slaughter. Electronic facsimiles or email of the proposal will not be accepted.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will gen-

erally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager at 1-800-68-PILOT (74568). Please contact Bill Fuller, PE, Director of Engineering, for technical questions at 1-800-68-PILOT (74568).

TRD-200600044
Jack Ingram
Associate General Counsel
Texas Department of Transportation
Filed: January 4, 2006

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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 30 (2005) is cited as follows: 30 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 "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

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

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (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 and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (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 21, April 15, July 8, and October 7, 2005). 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).