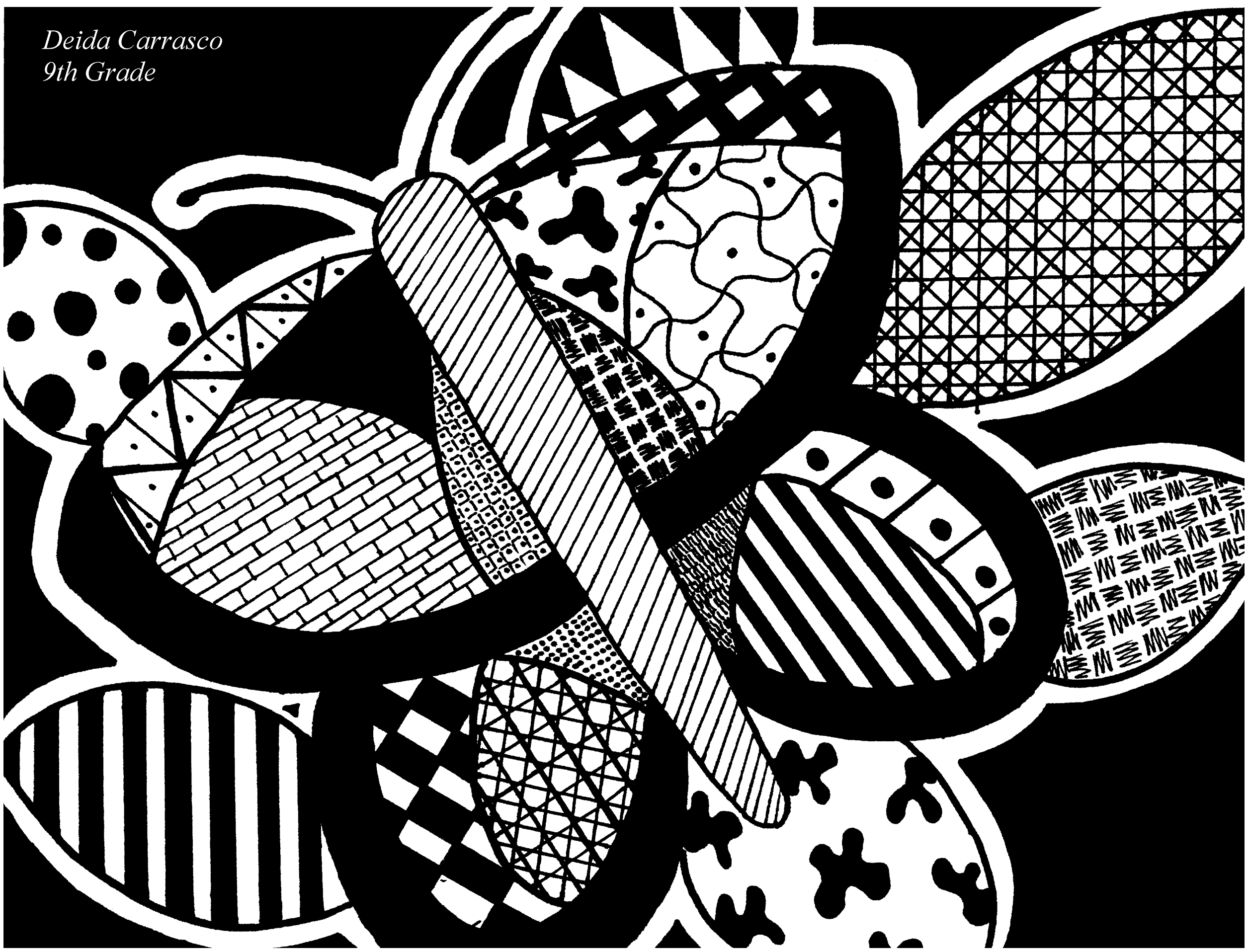
Texas Register

Volume 31 Number 15 April 14, 2006 Pages 3117-3322



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Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
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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 March 30, 2006

Appointed to the Texas Medical Board for a term to expire April 13, 2007, Charles Edward Oswalt, III, M.D. of Waco (replacing Thomas Kirksey of Austin who resigned).

Appointed to the Texas Poet Laureate, State Musician and State Artists Committee for a term to expire October 1, 2007, Suzanne P. Azoulay of Dallas (replacing Donna Stockton Hicks of Austin whose term expired).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2007, Julie Elaine Lewis of Frisco (reappointment).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2007, Donna Burkett Rogers of San Antonio (reappointment).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2007, David E. King of Kingwood (reappointment).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2007, J. C. Jackson of Seabrook (reappointment).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2007, Anthony J. Busti, Pharm.D. of Midlothian (reappointment).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2007, Harris M. Hauser, M.D. of Houston (reappointment).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2007, Melbert C. Hillert, Jr., M.D. of Dallas (reappointment).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2007, Guadalupe Zamora, M.D. of Austin (reappointment).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2007, Valerie Robinson, M.D. of Lubbock (reappointment).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2007, Mario R. Anzaldua, M.D. of Mission (replacing John Zerwas who resigned).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2007, Richard C. Adams, M.D. of Plano (reappointment).

Rick Perry, Governor

TRD-200601989

♦ ♦ ♦

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-0466-GA

Requestor:

The Honorable Robert G. Neal, Jr.

Sabine County Attorney

Post Office Box 1783

Hemphill, Texas 75948

Re: Authority and duties of the Sabine County Hospital District (Request No. 0466-GA)

Briefs requested by April 28, 2006

RQ-0467-GA

Requestor:

The Honorable Frank J. Corte Jr.

Chair, Committee on Defense Affairs and State-Federal Relations

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the East Coke County Hospital District is authorized to operate a long-term health care facility and levy taxes for its maintenance and operation (Request No. 0467-GA)

Briefs requested by April 28, 2006

RQ-0468-GA

Requestor:

The Honorable Eddie Lucio, Jr.

Chair, Committee on International Relations and Trade

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether a "water rights fee" imposed by the Public Utilities Board of the City of Brownsville is an impermissible "impact fee" (Request No. 0468-GA)

Briefs requested by April 28, 2006

RQ-0469-GA

Requestor:

The Honorable Harvey Hilderbran

Chair, Committee on Culture, Recreation, and Tourism

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the Edwards Aquifer Authority to reduce the groundwater withdrawal rights of permit holders (Request No. 0469-GA)

Briefs requested by April 28, 2006

RQ-0470-GA

Requestor:

The Honorable Jeff Wentworth

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether a member of a school district board of trustees may simultaneously serve as county clerk of the county in which the school district is located (Request No. 0470-GA)

Briefs requested by April 29, 2006

RQ-0471-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: Establishment of a homestead preservation district and reinvestment zone under chapter 373A, Local Government Code (Request No. 0471-GA)

Briefs requested by April 29, 2006

RQ-0472-GA

Requestor:

The Honorable Mike Fetter

Upshur County Criminal District Attorney

405 North Titus Street

Gilmer, Texas 75644

Re: Authority of a county commissioners court to appoint a county road administrator who is not a road engineer (Request No. 0472-GA)

Briefs requested by April 29, 2006

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

TRD-200602024
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: April 5, 2006

♦ ♦ ♦

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURES

1 TAC §§155.1, 155.5, 155.19, 155.30, 155.37

The State Office of Administrative Hearings (SOAH) proposes amendments to §155.1, concerning Purpose and Scope; §155.5, concerning Definitions; §155.19, concerning Computation of Time; §155.30, concerning Motions; and §155.37, concerning Settlement Conferences. In general, the amendments are proposed to correct words in titles, correct citations, and make minor wording changes.

Specifically, the reasons for proposing the amendments are as follows: Sections 155.1(a) and 155.5(4) are amended to change the name of the Department of Human Services to its current title of "Department of Aging and Disability." Section 155.19(c) is amended to correct a typographical error. Both §155.19(c) and §155.30(g) are amended to correct the section title citation by removing the words "Failure to Attend Hearing and" and replacing with the word "Proceedings." Section 155.37(a)(1) is amended by changing the citation to §155.29 (relating to Pleadings) to the citation §155.30 (relating to Motions).

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

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

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

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

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

§155.1. Purpose and Scope.

(a) Unless otherwise provided by statute or by the provisions of this chapter, this chapter will govern the processes followed by the State Office of Administrative Hearings (SOAH) in handling all matters referred to SOAH, including contested cases under the Administrative Procedure Act (APA), Tex. Gov't Code, Chapter 2001. Administrative License Suspension cases initiated by the Department of Public Safety are governed by Chapter 159 of this title (relating to Rules of Procedure for Administrative License Suspension Hearings). Arbitration procedures for certain enforcement actions of the Department of Aging and Disability [~~Human~~] Services are governed by Chapter 163 of this title (relating to Arbitration Procedures for Certain Enforcement Actions of the Department of Aging and Disability [~~Human~~] Services).

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

§155.5. Definitions.

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

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

(4) Arbitration--A form of ADR, governed by an agreement between the parties or special rules or statutes providing for the process, in which a third-party neutral issues a decision after a streamlined and simplified hearing. Arbitrations can be binding or non-binding, depending on the agreement, statutes, or rules. (See Chapter 163 of this title (relating to Arbitration Procedures for Certain Enforcement Actions of the Department of Aging and Disability [~~Human~~] Services) for procedural rules specifically governing the arbitration of certain nursing home enforcement cases referred by the Department of Aging and Disability [~~Human~~] Services).

(5) - (19) (No change.)

§155.19. Computation of Time.

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

(c) When by these rules or judge order an act is required or allowed to be done at or within a specified time, the judge may, for cause shown, order the period enlarged if application therefor [~~therefore~~] is made before the expiration of the specified period. In addition, where good cause is shown for the failure to act within the specified period, the judge may permit the act to be done after the expiration of the specified period. The judge may not enlarge the period for taking any action under the rules relating to reopening the record, §155.15(a)(4) of this title (relating to Powers and Duties of Judges), to default, §155.55 of this title (relating to [~~Failure to Attend Hearing and~~] Default Proceedings), and to the failure to prosecute, §155.56(a) of this title (relating to Dismissal Proceedings), except as stated in those rules.

§155.30. Motions.

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

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

§155.37. Settlement Conferences.

(a) On party request or in the judge's discretion, the judge may order that a mediated settlement conference (MSC) be held.

(1) Parties may object to the proposed ADR process by written response in the same manner as to other motions (*See* §155.30 [~~§155.29~~] of this title (relating to Motions [~~Pleadings~~]), specifically subsection (c), which refers to responses to motions generally [~~(d) of that section (relating to Responses to Motions Generally)~~]. A party may also request review of the case by SOAH's Alternative Dispute Resolution (ADR) Team Leader or the Team Leader's designee (including ex parte consultation with each party in confidence). The Team Leader or designee will make a written recommendation to the judge, which shall also be served on all parties, about whether the case is appropriate for ADR.

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

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

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

Filed with the Office of the Secretary of State on March 28, 2006.

TRD-200601862
Cathleen Parsley
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 475-4931

♦ ♦ ♦

CHAPTER 159. RULES OF PROCEDURE FOR ADMINISTRATIVE LICENSE SUSPENSION HEARINGS

1 TAC §§159.1, 159.3 - 159.5, 159.7, 159.9, 159.11, 159.13, 159.15, 159.17, 159.19, 159.21, 159.23, 159.25, 159.27, 159.29, 159.31, 159.33

The State Office of Administrative Hearings (SOAH) proposes new §§159.5, 159.7, 159.9, 159.11, 159.13, 159.15, 159.17, 159.19, 159.21, 159.23, 159.25, 159.27, 159.29, 159.31, and 159.33 and amendments to §§159.1, 159.3, and 159.4 concerning Administrative License Suspension Hearings, commonly known as the Administrative License Revocation (ALR) Program.

The main reason for proposing the new sections is basically to replace and renumber for organizational purposes outdated sections that are being concurrently proposed for repeal. Specifically, each new section is being proposed for the following reasons: New §159.5 (concerning Motion to Withdraw) is proposed to address the procedures an attorney must follow when withdrawing from representing a defendant; new §159.7 (concerning Waiver or Dismissal) is proposed to provide procedures for requesting a waiver of a request for hearing and what procedures to follow for rescission of a notice of suspension; new §159.9 (concerning Scheduling and Notice of Hearings) is proposed to provide procedures to follow for scheduling and notices of hearings; new §159.11 (concerning Continuances) is proposed to provide procedures to follow regarding the way continuances are handled; new §159.13 (concerning General Requests for Relief) is proposed to provide procedures for filing general requests for relief that require an interim order; new §159.15 (concerning Prehearing Discovery) is proposed to provide procedures to follow regarding prehearing discovery; new §159.17 (concerning Request for Appearance of Breath Test Operator and Technical Supervisor) is proposed to provide procedures for requesting the appearance of the breath test operator and/or the technical supervisor, eliminate the requirement that they must appear in person at the hearing, and, instead, allow them to appear by telephone; new §159.19 (concerning Subpoenas), provides two methods for compelling a peace officer's appearance. If the officer is to testify by telephone, an attorney may issue the subpoena and is required to provide the witness with a $10 witness fee check. However, no mileage reimbursement is required. If a party seeks to compel the officer's in-person appearance, an administrative law judge must issue the subpoena, and the same witness fee check must be provided to the witness. In addition, a mileage fee check based on the state mileage guide is required. The state mileage rate is currently $0.445 a mile. Previously, the mileage fee for a witness who appeared in person was $0.10 a mile if the witness had to travel more than ten miles. If a witness had to travel less than ten miles, no mileage fee check was required; new §159.21 (concerning Hearing) is proposed to provide procedures for the way hearings are conducted at SOAH; new §159.23 (concerning Participation by Telephone or Videoconferencing) is proposed to provide procedures to come into compliance with the way telephone appearances are handled at SOAH and to add videoconferencing as the technologically advanced alternative for appearing at hearings; new §159.25 (concerning Failure to Attend Hearing and Default) is proposed to provide procedures for the way defaults are handled; new §159.27 (concerning Hearing Disposition) is proposed to provide procedures to require that the facts are proven by a preponderance of the evidence as specified in the Tex. Trans. Code Ann.; new §159.29 (concerning Decision of the Administrative Law Judge) is proposed to provide information on what is required of the judge upon conclusion of the hearing, and to provide that the decision is appealable; new §159.31 (concerning Appeal of Judge's Decision) is proposed to provide procedures for appealing a judge's decision; and new §159.33 (concerning Other SOAH Rules of Procedure) is proposed to provide information regarding other SOAH procedures that may apply to contested cases under this chapter.

The reasons SOAH is proposing amendments to certain sections are as follows: §159.1 (concerning Scope) is proposed to provide statutory citations that apply to that section; §159.3 (concerning Definitions) is proposed to remove unnecessary definitions and update the meanings in others, and to provide the current statutory citations that apply to that section; §159.4 (concerning Computation of Time) is proposed to remove the words "the Office" and to replace those words with "SOAH;" to remove the acronym "ALJ" and replace it with the words "a judge;" and to make minor typographical corrections.

Cathleen Parsley, General Counsel, has determined that for the first five-year period that the amendments are in effect, there will be no fiscal implications for state government as a result of the amendments. The change in the mileage fee could impact local governments. The increased mileage will assist local governments by defraying the travel costs of peace officers who are compelled to testify at hearings. Defendants in administrative license revocations would bear the increased cost of paying mileage for witnesses who appeared in person. Additionally, local governments could also be positively impacted because the increased use of telephonic testimony would reduce the amount of on-duty time officers would spend traveling to and from hearings and waiting for cases to be called. SOAH does not, however, have the means to quantify actual cost savings that may result from the revised rule.

Cathleen Parsley also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result will be more efficient administration of the Administrative License Suspension Hearings or ALR Program. There will be no effect on small businesses.

Comments on the proposed new sections and proposed amendments must be submitted within 30 days after publication of the proposed sections in the *Texas Register* to Debra Anderson, Paralegal, State Office of Administrative Hearings, P. O. Box 13025, Austin, Texas 78711-3025 or by e:Mail to debra.anderson@soah.state.tx.us or by facsimile to (512) 463-1576.

The amendments are proposed under Transportation Code §§522.105, 524.002 and 724.003 which authorize SOAH to promulgate rules for the administration of Chapters 522, 524 and 724 of the Transportation Code.

The following statutes are affected by the proposed amendments: Transportation Code, Chapters 522, 524 and 724; Government Code, Chapters 2001 and 2003; and Penal Code, Chapter 49.

§159.1. Scope.

(a) This chapter applies to contested hearings before SOAH concerning administrative suspension, denial, or disqualification of drivers' licenses under the Administrative License Revocation (ALR) Program governed by the Tex. Trans. Code Ann., Chapters 522, 524, and 724. [~~before the State Office of Administrative Hearings.~~]

(b) (No change.)

(c) These rules shall supplement the procedures required by law, but to the extent they conflict with Tex. Gov't Code Ann., Chapter 2001, [~~the Administrative Procedure Act,~~] the provisions of this chapter shall prevail.

§159.3. Definitions.

(a) In this chapter, the following terms have the meanings indicated:

(1) Adult--An individual twenty-one years of age or older. [~~Administrative Law Judge or Judge--An individual appointed by the Chief Administrative Law Judge of the State Office of Administrative Hearings under the Texas Government Code, Chapter 2003 and Texas Transportation Code, Chapters 524 and 724.~~]

(2) ALR suspension--An administrative driver's license disqualification, suspension, or denial under the ALR Program which is the subject of this chapter. [~~Adult--An individual 21 years of age or older.~~]

(3) Alcohol concentration--Has the meaning stated in Tex. Pen. Code Ann. §49.01. [~~ALR Suspension--Pursuant to Texas Transportation Code, Chapters 522, 524 or 724 means an administrative driver's license suspension under the Administrative License Revocation (ALR) Program which is the subject of this chapter.~~]

(4) Alcohol-related or drug-related enforcement contact--Has the meaning stated in Tex. Trans. Code Ann. §524.001. [~~Alcohol concentration--As defined in Penal Code §49.01(1) means:~~]

[~~(A) the number of grams of alcohol per 100 milliliters of blood;~~]

[~~(B) the number of grams of alcohol per 210 liters of breath; or~~]

[~~(C) the number of grams of alcohol per 67 milliliters of urine.~~]

(5) Certified Breath Test Technical Supervisor--A person who has been certified by DPS to maintain and direct the operation of a breath test instrument used to analyze breath specimens of persons suspected of driving while intoxicated. [~~Alcohol-related or drug-related enforcement contact--As defined in Texas Transportation Code, §524.001(3) means a driver's license suspension, disqualification, or prohibition order under the laws of this state or another state following:~~]

[~~(A) a conviction of an offense prohibiting the operation of a motor vehicle while intoxicated, while under the influence of alcohol, or while under the influence of a controlled substance;~~]

[~~(B) a refusal to submit to the taking of a blood or breath specimen following an arrest for an offense prohibiting the operation of a motor vehicle while intoxicated, while under the influence of alcohol, or while under the influence of a controlled substance; or~~]

[~~(C) an analysis of a blood or breath specimen showing an alcohol concentration of the level specified in §49.01(2) of the Penal Code, following an arrest for an offense prohibiting the operation of a motor vehicle while intoxicated.~~]

(6) Contested case--A proceeding brought under Tex. Trans. Code Ann., Chapter 522, Subchapter I; Chapter 524, Subchapter D; or Chapter 724, Subchapter D. [~~APA--The Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.~~]

(7) Defendant--One who holds a license as defined in Tex. Trans. Code Ann. Chapter 521 or an unlicensed driver whose legal rights, duties, statutory entitlement, or privileges may be affected by the outcome of a contested case under this chapter. [~~Certified Breath Test Technical Supervisor--A person who has been certified by the department to maintain and direct the operation of a breath test instrument used to analyze breath specimens of persons suspected of driving while intoxicated.~~]

(8) Denial--The non-issuance of a license or permit, and loss of the privilege to obtain a license or permit. [~~Child--As defined in §51.02 of the Texas Family Code, means a person who is:~~]

[~~(A) 10 years of age or older and under 17 years of age; or~~]

[~~(B) 17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.~~]

(9) DPS--The Department of Public Safety. [~~Commercial Driver's License--As defined in Texas Transportation Code, §522.003(3), means a license issued to an individual that authorizes the individual to drive a class of commercial motor vehicle.~~]

(10) Driver--A person who drives or is in actual physical control of a motor vehicle. [~~Commercial Motor Vehicle--As defined~~

~~in Texas Transportation Code, §522.003(5), means a motor vehicle or combination of motor vehicles used to transport passengers or property that:~~]

[~~(A) has a gross combination weight rating of 26,001 or more pounds including a towed unit with a gross vehicle weight rating of more than 10,000 pounds;~~]

[~~(B) has a gross vehicle weight rating of 26,001 or more pounds;~~]

[~~(C) is designed to transport 16 or more passengers, including the driver; or~~]

[~~(D) is transporting hazardous materials and is required to be placarded under 49 CFR Part 172, Subpart F.~~]

(11) Final Decision--The decision issued by a judge who hears the contested case or another judge who reviewed the record in its entirety and who is authorized under appropriate law to issue a final decision in an ALR case. [~~Contested Case--A proceeding brought under Texas Transportation Code, Chapter 522, Subchapter I, Chapter 524, Subchapter D, or Chapter 724, Subchapter D.~~]

(12) Intoxicated--Has the meaning state in Tex. Pen. Code Ann. §49.01(2). [~~Conviction--When involving minors, includes an adjudication under Title 3 of the Texas Family Code for conduct constituting an offense under §106.041, Alcoholic Beverage Code or under §§49.04, 49.07, 49.08 of the Penal Code. An order of deferred adjudication received by a minor for an offense alleged under the aforementioned sections is also considered a conviction.~~]

(13) Minor--An individual under twenty-one years of age. [~~Defendant--One who holds a license as defined in paragraph (20) of this subsection and whose legal rights, duties, statutory entitlement, or privileges may be affected by the outcome of a contested case under this chapter.~~]

(14) Nonresident--A person who is not a resident of this state. [~~Denial--The non-issuance of a license or permit, and loss of the privilege to obtain a license or permit, as defined in paragraph (20) of this subsection.~~]

(15) Operate--To drive or be in actual physical control of a motor vehicle. [~~Department--The Department of Public Safety.~~]

(16) Peace Officer--A person elected, employed, or appointed as a peace officer under Tex. Code Crim. Proc. Ann. §2.12 or other law. [~~Disqualification--As defined in Texas Transportation Code, §522.003(9), means a withdrawal of the privilege to drive a commercial motor vehicle and includes the suspension, cancellation, or revocation of that privilege as authorized by a state or federal law.~~]

(17) Public place--Has the meaning stated in Tex. Pen. Code Ann. §1.07 and Tex. Trans. Code Ann. §524.001. [~~Driver--A person who drives or is in actual physical control of a motor vehicle.~~]

(18) SOAH--The State Office of Administrative Hearings. [~~Final Decision--The decision issued by a Judge who hears the contested case and who is authorized under Texas Transportation Code, Chapter 522, Subchapter I, Chapter 524, Subchapter D, or Chapter 724, Subchapter D to issue final decisions in driver's license suspension cases.~~]

(19) Test--Has the meaning stated in Tex. Trans. Code Ann. §522.101(b) and §724.011. [~~Intoxicated--Has the meaning assigned by Penal Code, §49.01(2).~~]

[~~(20) License--A driver's license or other license or permit as provided in Texas Transportation Code, §521.001(a)(6) to operate a motor vehicle issued under, or granted by, the laws of this state.~~]

[~~(21) Minor--An individual under 21 years of age.~~]

[~~(22) Nonresident--A person who is not a resident of this state.~~]

[~~(23) Office--The State Office of Administrative Hearings.~~]

[~~(24) Operate--To drive or be in actual physical control of a motor vehicle.~~]

[~~(25) Peace Officer--As used in Texas Transportation Code, Chapters 522, 524 and 724, means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, or other law. A peace officer may also be referred to as an arresting officer.~~]

[~~(26) Public Place--Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.~~]

[~~(27) Test--Pursuant to Texas Transportation Code, Chapter 724, Subchapter B, or Chapter 522, Subchapter I, means the following:~~]

[~~(A) one or more specimens of a person's breath for the purpose of analysis to determine the alcohol concentration; or~~]

[~~(B) one or more specimens of a person's blood for the purpose of analysis to determine the alcohol concentration or the presence in his body of a controlled substance, drug, dangerous drug or other substance; or~~]

[~~(C) one or more specimens of a person's urine for the purpose of analysis to determine the alcohol concentration or the presence in his body of a controlled substance, drug, dangerous drug or other substance.~~]

(b) The following terms have the meaning set out in §155.5 of this title (relating to Definitions): [~~this section.~~]

(1) Administrative Law Judge or judge; [~~Authorized representative--An attorney authorized to practice law in the State of Texas or, where permitted by applicable law, a person designated by a party to represent the party;~~]

(2) APA; [~~Chief Judge--The Chief Administrative Law Judge of the Office.~~]

(3) Authorized representative; [~~Law--State and federal statutes, regulations, and relevant case law.~~]

(4) Law; [~~Party--A person or agency named, or admitted to participate, in a case before the Office.~~]

(5) Party; [~~Person--Any individual, representative, corporation or other entity, including any public or nonprofit corporation, or any agency or instrumentality of federal, state, or local government.~~]

(6) Person.

§159.4. Computation of Time.

In computing time periods prescribed by this chapter or by a judge's [~~ALJ~~] order, the day of the act, event, or default on which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, a Sunday, an official state [~~State~~] holiday, or another day on which SOAH [~~the Office~~] is closed, in which case the time period will be deemed to end on the next day that SOAH [~~the Office~~] is open. When these rules specify a deadline or set a number of days for filing documents or taking other actions, the computation of time shall be by calendar days rather than business days, unless otherwise provided in this chapter or a judge's [~~ALJ~~] order.

However, if the period within which to act is five days or less, the intervening Saturdays, Sundays, and legal holidays are not counted, unless this chapter or a judge's [~~ALJ~~] order otherwise specifically provides.

§159.5. Motion to Withdraw.

(a) An attorney may withdraw from representing a defendant only upon written motion for good cause shown. If another attorney is to be substituted as attorney for the defendant, the motion shall state the attorney's name, address, telephone number, and telecopier number and state that the attorney approves the substitution.

(b) If the defendant has no substitute attorney, the withdrawing attorney must include the defendant's last known address and a statement indicating whether the defendant consents to the withdrawal.

(c) If defendant does not consent to the withdrawal, the attorney must affirm that the defendant has been informed of the right to object to the motion.

(d) If the motion to withdraw is granted, the withdrawing attorney shall immediately notify the defendant in writing of any additional settings or deadlines of which the attorney has knowledge at the time of the withdrawal and has not already notified the defendant.

§159.7. Waiver or Dismissal.

(a) Waiver of Request for Hearing. The defendant may waive the request for hearing at any time before the administrative order is final. If the defendant requests a waiver after the notice of hearing is issued, the judge will enter an order accepting the waiver.

(b) Rescission of Notice of Suspension. If, after issuing a notice of hearing, DPS rescinds a notice of suspension, it shall immediately inform SOAH and the defendant of the rescission. SOAH may, on its own motion, dismiss any case from its docket once the notice of suspension has been rescinded.

§159.9. Scheduling and Notice of Hearings.

(a) On receipt of a timely request for hearing, DPS shall schedule a hearing to be conducted by a SOAH judge.

(b) The location of the hearing will be set in accordance with the requirements stated in Tex. Trans. Code Ann. §524.034 and §724.041. SOAH or DPS may change the hearing site upon agreement of all parties.

(c) With the consent of the parties, the hearing may be conducted by telephone conference call. Once DPS issues the notice of hearing scheduling the hearing by telephone conference, the hearing may be removed from the telephone hearing docket only upon timely request pursuant to §159.13 of this title (relating to Continuances) or by agreement of the parties and with the consent of SOAH.

(d) It is a rebuttable presumption that DPS mailed the notice to the defendant on the same date as the date listed in the notice of hearing.

§159.11. General Requests for Relief.

After a hearing has been scheduled to be heard by SOAH, any party making a request that requires an interim order must do so in writing to SOAH, with a copy to the opposing party. Except for a request for subpoena, the request must contain a certificate of service and a certificate of conference stating whether the opposing party has agreed to the request. Such written requests must be filed at least five calendar days prior to the scheduled hearing date, unless another time limit is specified in these rules or unavoidable circumstances prevent compliance with such time limits. A party claiming unavoidable circumstances must describe those circumstances in the written request.

§159.13. Continuances.

(a) Requests for continuance will be considered in accordance with the provisions of Tex. Trans. Code Ann. §§524.032, 524.039, and §724.041(g). DPS shall immediately notify SOAH of a continuance request under Tex. Trans. Code Ann. §524.032(b).

(b) A judge may grant a continuance if a subpoenaed witness is unavailable for the hearing.

(c) The granting of continuances shall be in the sound discretion of the judge, provided however, that the judge shall expedite the hearings whenever possible. A party requesting a continuance shall supply three dates on which the parties would be available for rescheduling of the hearing. The judge will consider these dates in resetting the case. Failure to include a certificate of service, a certificate of conference, and three alternative dates may result in denial of the continuance request or subsequent continuance requests in the same case.

(d) With the exception of a hearing that is rescheduled in accordance with Tex. Trans. Code Ann. §524.032(b), no party is excused from appearing at a hearing until notified by SOAH that a motion for continuance has been granted.

§159.15. Prehearing Discovery.

(a) A defendant shall be allowed to obtain copies of the following documents if they are contained in DPS's ALR file:

(1) police reports;

(2) any statutory warning form;

(3) any notice of suspension;

(4) any other document or record DPS intends to offer into evidence at the hearing.

(b) DPS shall be allowed to obtain copies of any non-privileged, relevant documents in the defendant's possession.

(c) All requests for discovery must be in writing and served upon the other party by one of the means described in 37 TAC §17.16(a) (relating to Service on Department of Certain Items Required to be Served on, Mailed to, or Filed with the Department). A discovery request may not be filed before a hearing request is filed and may be filed no earlier than the sixth day after the notice of suspension was issued.

(d) A party must supplement its discovery responses within five business days following receipt of discoverable documents.

(e) When one party has failed to timely supplement a proper discovery request and the other party has proven harm as a result of the failure, the judge may grant a continuance. In the alternative, the judge may proceed with the hearing, but no document properly sought and not provided in discovery will be admissible, nor may it be filed to establish a procedural issue, unless it was provided to the requestor in accordance with this rule.

(f) Depositions, interrogatories, and requests for admissions shall not be permitted.

(g) In addition to discovery as described in subsection (a) of this section, if a party believes documents or tangible things from a nonparty would be relevant and probative to the case, the party may request issuance of a subpoena duces tecum pursuant to §159.19 of this title (relating to Subpoenas) to have the documents or tangible things produced at the hearing. If a person subpoenaed under this subsection does not produce the subpoenaed documents or tangible things, the judge may grant a continuance to allow for enforcement of the subpoena. If special equipment will be required in order to offer such documents or tangible things, the party seeking their admission shall be required to supply the necessary equipment. The judge may condition the granting of the subpoena duces tecum upon the advancement by the party requesting the subpoena of the reasonable costs of reproducing the documents or tangible things requested.

§159.17. Request for Appearance of Breath Test Operator and Technical Supervisor.

(a) Upon receipt of timely request for the appearance of the certified breath test operator who administered the test and obtained the defendant's specimen to determine the level of alcohol concentration in the defendant's body and/or the certified breath test technical supervisor, DPS shall ensure that the requested individuals are available to testify by telephone. These witnesses will not be required to appear in person for the hearing except upon a showing to the judge of good cause that clearly demonstrates why an appearance by telephone would unfairly prejudice a party's rights.

(b) Testimony by telephone will be subject to the provisions of §159.23(b) of this title (relating to Participation by Telephone or Videoconferencing).

§159.19. Subpoenas.

(a) Scope.

(1) A subpoena may command a person to give testimony for an ALR hearing and/or produce designated documents or tangible things in the actual possession of that person.

(2) The party who causes a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served.

(3) If a party that requests a subpoena fails to timely appear at the hearing, any subpoenaed witnesses will be released.

(b) Distance to comply. A person may not be compelled to appear in person at a hearing location that is more than 75 miles from that person's duty station.

(c) Subpoena form. Subpoenas shall be issued on a form provided by SOAH that will be made available on SOAH's website at www.soah.state.tx.us. The form must contain at least the following information:

(1) the style of the case, including the docket number;

(2) the name and address of the requested witness;

(3) the time, date, and location of the scheduled hearing;

(4) the name, address, and telephone number of the defendant, or if the defendant is represented, the defendant's representative;

(5) a description of any documents or items that are being requested;

(6) if applicable, a statement of the number of miles that the witness will travel to the hearing from the witness's place of employment; and

(7) if applicable, a statement informing the witness of the option to appear via telephone as described in subsection (d) of this section.

(d) Attorney-issued subpoena for appearance via telephone. If a hearing location has adequate telephone capability, the defendant's or DPS's attorney, if authorized to practice law in the State of Texas, may issue up to two subpoenas for witnesses to appear by telephone conference call during a hearing. One subpoena may be issued to compel the presence of the peace officer who was primarily responsible for the defendant's stop or initial detention, and the other may be issued to compel the presence of the peace officer who was primarily responsible for finding probable cause to arrest the defendant. If the same officer was primarily responsible for both the defendant's stop and arrest, the attorney may issue only one subpoena.

(1) A copy of any subpoena issued pursuant to this section must be provided to the other party on the same day it is issued.

(2) A subpoena served by the defendant upon a peace officer in accordance with this subsection must include a witness fee check or money order in the amount of $10, which must be tendered to the witness when the subpoena is served. If the subpoenaed witness does not appear for the hearing and the hearing is not continued, the person who served the subpoena, not the judge or SOAH, will be responsible for recovering the witness fee check from the witness.

(3) In complying with a subpoena issued under this subsection, a certified peace officer may choose whether to attend the hearing in person or participate by telephone. If the peace officer intends to participate by telephone, the officer must provide to the DPS attorney the telephone number where he or she may be reached at the time of the hearing. If the peace officer attends the hearing in person, the Defendant will not be required to provide a mileage fee check for Defendant.

(4) If a witness will testify by telephone and documents have been subpoenaed or a witness has been subpoenaed only to produce documents, the witness must provide the designated documents to DPS prior to the hearing.

(e) Subpoena request filed with judge.

(1) No later than ten days prior to the hearing, a party may file a subpoena request with SOAH that clearly demonstrates good cause to compel a witness's appearance in person or by telephone, when:

(A) a party seeks a peace officer's in-person appearance and clearly demonstrates that an appearance by telephone would unfairly prejudice that party;

(B) a party intends to call more than two peace officers to testify as witnesses by telephone;

(C) a party seeks to compel the presence of witnesses who are not peace officers;

(D) the physical limitations of a particular site will not accommodate testimony by telephone; or

(E) a defendant represents himself or herself.

(2) In addition to being supported by a statement of good cause and unfair prejudice, the request must also include the specific issues about which the witness is to testify. A general statement asserting that the witness will testify about reasonable suspicion to stop or probable cause to arrest the defendant will not suffice.

(3) A subpoena served by the defendant upon a peace officer in accordance with this subsection must include a witness fee check or money order in the amount of $10, which must be tendered to the witness when the subpoena is served. Also, when the witness appears for the hearing, the Defendant must tender to the witness a check for mileage based on the rate listed in the state mileage guide at http://ecpa.cpa.state.tx.us/mileage/Mileage.jsp.

(f) Judge's discretion. The decision to issue a subpoena, as described in subsection (e) of this section, shall be in the sound discretion of the judge assigned to the case. The judge shall refuse issuance of a subpoena if:

(1) the testimony or documentary evidence is immaterial, irrelevant, or would be unduly repetitious;

(2) good cause has not been shown.

(g) Service upon witness. The party who issues or is granted a subpoena shall be responsible for having the subpoena served in accordance with Tex. R. Civ. Proc. §176.5. A subpoena to compel the presence of a peace officer or to secure documents from that officer may also be served by accepted alternative methods established by that peace officer's law enforcement agency, except that a subpoena must be served at least five days before the scheduled hearing.

(h) Continuing effect. A properly-issued subpoena is in effect until the judge releases the witness or until a motion to quash or for protective order is filed. If a hearing is rescheduled and a subpoena is extended, the party who subpoenaed the witness shall promptly notify the witness of the new hearing date unless the judge specifically directs otherwise.

(i) Motion to quash or for protective order.

(1) On behalf of a subpoenaed witness, a party may move to quash a subpoena or for a protective order. The party that moves to quash a subpoena must serve the motion on the other party at the time the motion is filed with SOAH.

(2) A witness need not comply with the part of a subpoena from which protection is sought unless ordered to do so by the judge.

(3) A party may seek an order from the judge at any time after the motion to quash or motion for protective order has been filed.

(4) In ruling on objections or motions for protection, the judge must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The judge also may impose reasonable conditions on compliance with a subpoena.

§159.21. Hearing.

(a) Procedures.

(1) Hearings shall be conducted in accordance with the APA, Tex. Gov't Code Ann. Chapter 2001, when applicable, and with this chapter, provided that if there is a conflict between the provisions of the APA and the provisions of this chapter, this chapter shall govern. If a conflict exists between the provisions of this chapter and Tex. Trans. Code Ann. Chapters 522, 524, or 724, and the provisions in this chapter cannot be harmonized with a statute, the applicable statute controls.

(2) Once the hearing has begun, the parties may be off the record only when the judge permits. If a discussion off the record is pertinent, the judge will summarize it for the record.

(3) In the interest of justice and efficiency, the judge may question witnesses.

(4) The judge shall exclude testimony or any evidence which is irrelevant, immaterial, or unduly repetitious.

(b) Evidence. Pursuant to Tex. Gov't Code Ann. §2001.081, the rules of evidence as applied in a non-jury civil case in a district court of this state shall apply to a contested case.

(c) Witnesses and affidavits.

(1) All witnesses shall testify under oath.

(2) An officer's sworn report of relevant information shall be admissible as a public record. However, the defendant shall have the right to subpoena the officer in accordance with §159.19 of this title (relating to Subpoenas). If the defendant timely subpoenas an officer and the officer fails to appear without good cause, information obtained from that officer shall not be admissible.

(3) All substantive and procedural rights apply to the telephonic appearance of such witness, subject to the limitations of the physical arrangement as set out in §159.23(b) of this title (relating to Participation by Telephone or Videoconferencing).

(d) Record of hearing.

(1) The judge shall make an accurate and complete tape recording of the oral proceedings of the hearing.

(2) SOAH will maintain a case file that includes the tape recording, pleadings, evidence, and the judge's decision.

(3) SOAH will maintain case files in accordance with the terms of its Records Retention Schedule.

(e) Interpreters.

(1) Upon the defendant's written request for an interpreter filed with SOAH and DPS not less than seven days prior to the date of the hearing, SOAH will provide an interpreter for non-English speaking defendants or for the defendant's subpoenaed witnesses who appear at the hearing. If the defendant fails to make a timely request, the judge may continue the hearing to secure an interpreter, or the defendant may provide an interpreter. However, the defendant's attorney may not serve as the interpreter.

(2) Interpreters for deaf or hearing-impaired parties will be secured by SOAH, subject to the APA §2001.055.

(3) A defendant who makes a request for an interpreter pursuant to this subsection and fails to appear may be subject to costs incurred by SOAH in securing the interpreter or may be required to pay for securing an interpreter for a subsequent hearing.

§159.23. Participation by Telephone or Videoconferencing.

(a) Upon the judge's own motion, the judge may conduct all or part of a hearing on preliminary matters by telephone or videoconferencing if each participant has an opportunity to participate in and hear the entire proceeding.

(b) Procedural Rights and Duties. All substantive and procedural rights and duties apply to telephone or videoconference hearings, subject only to the limitations of the physical arrangement. The parties shall notify SOAH of their telephone numbers for the purpose of their appearance at the hearing. The parties shall contact their respective witnesses to ensure their availability at the hearing. When a hearing is held in person, but a subpoenaed law enforcement officer will testify by phone, the officer will notify DPS, not the defendant, of a telephone number where he or she may be reached.

(c) Documentary evidence. To be offered in a telephone or videoconference hearing, copies of exhibits should be marked and must be filed with SOAH and all parties no later than two business days prior to the scheduled hearing, unless otherwise agreed by the parties. If a witness, in preparation for or during testimony, reviews any document that has not been prefiled and the opposing party requests an opportunity to review the document, the judge will go off the record and allow the witness to read the document to the opposing party.

(d) Default. For a telephone or videoconference hearing, the following may be considered a failure to appear and grounds for default, if the conditions exist for more than ten minutes after the scheduled time for hearing:

(1) failure to answer the telephone or videoconferencing line;

(2) failure to free the line for the proceeding; or

(3) failure to be ready to proceed with the hearing or a prehearing or post-hearing conference as scheduled.

§159.25. Failure to Attend Hearing and Default.

(a) Upon proof by DPS that notice of the hearing on the merits was mailed to the last known address of defendant, or if defendant has legal representation, to defendant's counsel, and that notwithstanding such notice, defendant failed to appear, defendant's right to a hearing on the merits is waived. A rebuttable presumption that proper notice was given to the defendant may be established by the introduction of a notice of hearing dated not earlier than eleven days prior to the hearing date and addressed to defendant's or defense counsel's last known address, as reflected on defendant's notice of suspension, request for hearing, driving record, or similar documentation presented by DPS. Under those circumstances, the judge will proceed in defendant's absence and enter a default order.

(b) Within ten business days of the default, the defendant may file a written motion with SOAH and DPS requesting that the default order be vacated because the defendant had good cause for failing to appear. The defendant's written motion must state whether he has conferred with DPS, whether DPS opposes the motion, and if DPS does oppose the motion, list dates and times for a hearing on the motion that are agreeable to both parties. Whether or not DPS opposes the motion, the judge may rule on the motion without setting a hearing or may set a hearing to consider the motion. A hearing on a motion to vacate a default order may be held by telephone conference call. If the judge finds good cause for the defendant's failure to appear, the judge shall vacate the default order and reset the matter for a contested case hearing.

§159.27. Hearing Disposition.

(a) If the judge finds that DPS proved the requisite facts as specified in Tex. Trans. Code Ann. §§522.105, 524.035, or §724.042 by a preponderance of the evidence, the judge shall grant DPS's petition.

(b) If the judge finds DPS did not prove all of the requisite facts by a preponderance of the evidence, the judge shall deny DPS's petition, and DPS shall not be authorized to suspend or deny defendant's license or disqualify defendant from receiving a license for the conduct at issue.

§159.29. Decision of the Administrative Law Judge.

(a) Upon conclusion of the hearing, the judge shall issue a written decision that includes findings of fact and conclusions of law and advises parties of their rights to appeal.

(b) The decision of the judge is final and appealable. No party shall file a motion for rehearing with SOAH.

§159.31. Appeal of Judge's Decision.

(a) The record on appeal shall consist of the following:

(1) the first file-marked or stamped copy of all parties' motions or other pleadings;

(2) all written orders or decisions issued by the judge and any evidence of transmittal to the parties;

(3) all exhibits admitted into evidence;

(4) all exhibits not admitted into evidence, but made a part of the record by a party as an offer of proof or bill of exceptions; and

(5) a transcription of the proceedings electronically recorded by SOAH.

(b) A person who appeals a suspension may obtain a transcript of the administrative hearing by sending a written request to SOAH within ten days of filing the appeal and paying the applicable fees. The fees shall not exceed the actual cost of preparing or copying the transcript, and upon receipt of the fees, SOAH shall promptly furnish the reviewing court and both parties a certified copy of the record. The transcription of the electronic recording made by SOAH constitutes the official record for appellate purposes. For three years after notice of an appeal is filed, SOAH will maintain the file and original recording of proceedings. A copy of the file and recording will be available for review by the parties or a reviewing court, if needed.

(c) If a case is remanded for taking of additional evidence, the appellant must file with SOAH, within ten days of the signing of the reviewing court's remand order, a request for relief, including setting a hearing on remand. The request must include a copy of the remand order and if a hearing is requested, an estimate of the time required to present the additional evidence.

(d) A remand under this section does not stay the suspension of a driver's license.

§159.33. Other SOAH Rules of Procedure.

Other SOAH rules of procedure found at Chapters 155, 157 and 161 of this title (relating to Rules of Procedure, Temporary Administrative Law Judges, and Requests for Records) may apply in contested cases under this chapter unless there are specific applicable procedures set out in this chapter. The sections that specifically apply include the following:

(1) §155.15 of this title (relating to Powers and Duties of Judges);

(2) §155.17 of this title (relating to Assignment of Judges to Cases);

(3) §155.21 of this title (relating to Representation of Parties);

(4) §155.31 of this title (relating to Discovery), specifically subsections (l) and (m);

(5) §155.39 of this title (relating to Stipulations);

(6) §155.41 of this title (relating to Procedure at Hearing);

(7) §155.49 of this title (relating to Conduct and Decorum);

(8) §157.1 of this title (relating to Temporary Administrative Law Judge); and

(9) §161.1 of this title (relating to Charges for Copies of Public Records).

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

Filed with the Office of the Secretary of State on March 28, 2006.

TRD-200601864
Cathleen Parsley
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 475-4931

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CHAPTER 159. RULES OF PROCEDURE FOR ADMINISTRATIVE LICENSE SUSPENSION PROCEEDINGS

1 TAC §§159.5, 159.7, 159.9, 159.11, 159.13, 159.15, 159.17, 159.19, 159.21, 159.23, 159.25, 159.27, 159.29, 159.31, 159.33, 159.35, 159.37, 159.39, 159.41

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

The State Office of Administrative Hearings (SOAH) proposes to repeal §§159.5, 159.7, 159.9, 159.11, 159.13, 159.15, 159.17, 159.19, 159.21, 159.23, 159.25, 159.27, 159.29, 159.31, 159.33, 159.35, 159.37, 159.39, and 159.41.

The repeal of some of these sections will serve to remove outdated rules no longer necessary in the Administrative License Revocation process, and also remove some existing rules to allow the simultaneous adoption of new rules providing more uniform procedure, which are being concurrently proposed.

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

Cathleen Parsley also has determined that for the first five-year period the repeals are in effect, the public benefit anticipated as a result of the repeals will be to ensure more uniform and detailed guidelines for hearing processes in the many Administrative License Revocation cases referred to the State Office of Administrative Hearings by the Texas Department of Public Safety. There will be no effect on small businesses as a result of enforcing the repeals. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Written comments on the proposed repeals must be submitted within 30 days after publication of the proposed sections in the *Texas Register* to Debra Anderson, Paralegal, State Office of Administrative Hearings, to P. O. Box 13025, Austin, Texas 78711-3025, by e:Mail at: debra.anderson@soah.state.tx.us, or by facsimile to (512) 463-1576.

The repeals are proposed under Texas Transportation Code §§522.105, 524.002 and 724.003 which authorize SOAH to promulgate rules for the administration of Chapters 522, 524 and 724 of the Texas Transportation Code.

The following statutes are affected by the proposed amendments: Texas Transportation Code, Chapters 522, 524 and 724; Texas Government Code Chapters 2001 and 2003; and Texas Penal Code Chapter 49.

§159.5. Notice of Suspension.

§159.7. Request for Hearing.

§159.9. Scheduling of Hearings.

§159.11. Continuances.

§159.13. Prehearing Discovery.

§159.15. Request for Appearance of Department's Witnesses.

§159.17. Request for Subpoenas.

§159.19. Issues.

§159.21. Issues in Cases Involving Commercial Drivers' Licenses.

§159.23. Hearing.

§159.25. Telephone Hearings.

§159.27. Failure to Attend Hearing and Default.

§159.29. Hearing Disposition.

§159.31. Decision of the Administrative Law Judge.

§159.33. Effective Date of Suspensions.

§159.35. Proceedings Open to the Public.

§159.37. Appeal of Judge's Decision.

§159.39. Stay of Suspension.

§159.41. Other Office Rules of Procedure.

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 March 28, 2006.

TRD-200601863
Cathleen Parsley
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 475-4931

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CHAPTER 161. REQUESTS FOR RECORDS

1 TAC §161.1

The State Office of Administrative Hearings (SOAH) proposes amendments to §161.1, concerning Charges for Copies of Public Records. The reason for the amendments is to correct the reference to the "General Services Commission" to reference its current title of "Texas Building and Procurement Commission," and to correct the reference to the Commission's section citation from "§§111.61 - 111.70 of this title (relating to Cost of Copies of Open Records)" to "§§111.61 - 111.71 of this title (relating to Cost of Copies of Public Information)."

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

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

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

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

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

§161.1. Charges for Copies of Public Records.

(a) The charge to any person requesting photocopied reproductions of any readily available record of the State Office of Administrative Hearings will be the charges established by the Texas Building and Procurement [~~General Services~~] Commission which are codified at 1 TAC §§111.61 - 111.71, [§§~~111.61-111.70~~] of this title (relating to Cost of Copies of Public Information [~~Open Records~~]) [(~~effective April 22, 1994~~)].

(b) (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 March 28, 2006.

TRD-200601865
Cathleen Parsley
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 475-4931

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PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.6

The Commission on State Emergency Communications (CSEC) proposes amendments to §251.6, concerning guidelines for submission requests from regional planning commissions on strategic plans, amendments and allocation of funds.

The amendments are proposed as part of Rule Review of Chapter 251 pursuant to Texas Government Code, §2001.039. The rule continues to be essential to the CSEC's operations and per statutory authority.

The proposed changes to the rule include: alignment with current CSEC rule structure; alignment with the current strategic plan funding levels of priority; deletion of duplication of information provided in Program Policy Statement (PPS-008), Plan Amendments; and, revised instructions and funding parameters for pagers and generators. The TARC 911 Coordinators' Subcommittee formally requested that CSEC review and revise the requirements for funding caps for the purchase of generators. Representatives of the TARC subcommittee worked closely with CSEC staff to research and develop the proposed changes to the rule. TARC concurs with the proposed changes.

Paul Mallett, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Mallett also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended section will be improved system for funds allocation and implementation levels for the 9-1-1 program statewide. No historical data is available; however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated local employment impact as a result of enforcing the amended section.

Comments on the amendments may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendments are proposed pursuant to the Texas Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075; and Texas Administrative Code, Title 1, Part 12, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to plan, develop, fund, and provide provisions for the enhancement of effective and efficient 9-1-1 service.

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

§251.6. Guidelines for Strategic Plans, Amendments, and Revenue Allocation.

(a) Purpose. The Commission on State Emergency Communications (Commission) establishes [~~purpose of~~] this rule [~~is~~] to provide [~~the structure and~~] guidelines for a regional planning commission (RPC) to follow in developing or amending its regional plan and in describing how money allocated by the Commission is to be allocated in the region [~~regional strategic plans, funding of the plans, and amendments to the plans~~].

[~~(b) Background. As authorized by Chapter 771 of the Texas Health and Safety Code, the Commission on State Emergency Communications (Commission) may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. In accordance with Section 771.055 of the above chapter, such service implementation shall be consistent with regional plans developed by regional planning commissions (RPC). These regional plans must meet standards established by the Commission and "...include a description of how money allocated to the region under this chapter is to be allocated in the region." Section 771.057 addresses amendments to regional plans and indicates that such amendments may be adopted in accordance with procedure established by the Commission.~~]

(b) [~~(c)~~] Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions.

(c) [~~(d)~~] Regional [~~Strategic~~] Plan Budgets [~~Levels~~]. Regional [~~strategic~~] plans [~~developed in accordance with Chapter 771, along with the commensurate allocation of the above described funds,~~] shall be [~~reflect implementation~~] consistent with the Administration, Equipment, and Program Budgets approved by the Commission. The Program Budget includes the following [~~following~~] four major strategic plan levels (in order of priority): for state appropriations years 2004-2005.

[~~(1) Level I: The equipment, network, and database equipment and/or services that provide the essential elements of 9-1-1 service, including the maintenance and replacement of equipment.~~]

[~~(A) Network;~~]

[~~(B) Wireless Phase I;~~]

[~~(C) Database;~~]

[~~(D) Equipment Lease;~~]

[~~(E) Equipment Purchase;~~]

[~~(F) Language Line; and~~]

[~~(G) Equipment Maintenance.~~]

[~~(2) Level II: The activities, equipment, and/or services that directly support and enhance 9-1-1 call delivery and data maintenance for the level of service provided to the region.~~]

[~~(A) Database Maintenance;~~]

[~~(B) MIS;~~]

[~~(C) Mapped ALI;~~]

[~~(D) PSAP Room Prep;~~]

[~~(E) PSAP Training;~~]

[~~(F) Public Education; and~~]

[~~(G) Wireless Phase II.~~]

[~~(3) Level III: The activities, equipment, and/or services that provide auxiliary enhancements to the delivery of 9-1-1 calls and the level of service provided to the region.~~]

[~~(A) Network Diversity;~~]

[~~(B) Training Positions;~~]

[~~(C) Emergency Power;~~]

[~~(D) Recorders;~~]

[~~(E) Pagers;~~]

[~~(F) Ancillary Maintenance & Repair; and~~]

[~~(G) Other.~~]

[~~(4) Level IV: Use of Revenue in Certain Counties. The activities, equipment, and/or services that provide auxiliary enhancements to the 9-1-1 system of a county subject to Health and Safety Code, Chapter 771, with a population over 700,000, or the county that has the highest population within an RPC participating in the Commission program to include, but not limited to:~~]

[~~(A) Design of a 9-1-1 System;~~]

[~~(B) Purchase of Equipment;~~]

[~~(C) Maintenance of Equipment; and~~]

[~~(D) Personnel.~~]

[~~(e) New Strategic Plan Levels. Regional strategic plans developed in accordance with Chapter 771, along with the commensurate allocation of the above described funds, shall reflect implementation consistent with the following four major strategic plan levels (in order of priority) beginning state appropriations year 2006.~~]

(1) Level I: The equipment, network, and database equipment and/or services that provide the essential elements of 9-1-1 service, including the maintenance and replacement of equipment.

(A) Network;

(B) Wireless;

(C) Database;

(D) Equipment Lease;

(E) Language Line; and

(F) Equipment Maintenance.

(2) Level II: The activities, equipment, and/or services that directly support and enhance 9-1-1 call delivery and data maintenance for the level of service provided to the region.

(A) Database Maintenance;

(B) MIS;

(C) Mapped ALI;

(D) PSAP Room Prep;

(E) PSAP Training; and

(F) Public Education.

(3) Level III: The activities, equipment, and/or services that provide auxiliary enhancements to the delivery of 9-1-1 calls and the level of service provided to the region.

(A) Network Diversity;

(B) PSAP Supplies; and

(C) Ancillary Maintenance & Repair.

(4) Level IV: Use of Revenue in Certain Counties. The activities, equipment, and/or services that provide necessary auxiliary enhancements to the 9-1-1 system of a county eligible under Health and Safety Code section 771.0751 because it has subject to Health and Safety Code, Chapter 771, with a population over 700,000[~~,~~] or is the county that has the highest population within an RPC participating in the Commission program. [~~to include, but not limited to:~~]

[~~(A) Design of a 9-1-1 System;~~]

[~~(B) Purchase of Equipment;~~]

[~~(C) Maintenance of Equipment; and~~]

[~~(D) Personnel.~~]

(d) [~~(f)~~] Regional [~~Strategic~~] Plans. Regional [~~strategic~~] plans developed in compliance with Chapter 771 and Commission Rule 251.1 shall include projected [~~a strategic plan that projects~~] financial operating information for at least the two state fiscal years following submission of the plan [~~into the future~~]; and strategic planning information for at least the five state fiscal years following submission of the plan [~~into the future~~].

(1) The Commission shall establish the format of regional [~~strategic~~] plans for the sake of identifying overall statewide requirements in its implementation.

(2) Regional [~~Strategic~~] plans shall be consistent with the four major implementation priority levels identified above and with all applicable Commission policies and rules.

(3) An RPC shall submit financial reports at least quarterly on a schedule to be established by the Commission. The financial report shall identify actual implementation costs by county, regional [~~strategic~~] plan priority level and component.

(4) An RPC shall submit performance reports at least quarterly on a schedule to be established by the Commission. The performance report shall reflect the progress of implementing the RPC's regional [~~region's strategic~~] plan, including the status of equipment, services and program deliverables, in a format to be determined by the Commission.

(e) [~~(g)~~] Amendments to Regional [~~Strategic~~] Plans.

(1) An RPC may make changes to its approved regional [~~strategic~~] plan to accommodate unanticipated requirements and/or to prevent disruption of its implementation schedule, contingent upon compliance with all Commission policies and procedures. [~~Examples of occasions when an amendment must be submitted to the Commission include, but are not limited to:~~]

[~~(A) Requests for approval of items under Commission Rule 251.3, Use of Revenue in Certain Counties;~~]

[~~(B) Requests to shift budget authority from the Administrative budget to the Program budget, and vice versa;~~]

[~~(C) Requests to increase the total percentage of staff time charged to the 9-1-1 program (FTE), when the increase exceeds the total amount of time charged for all personnel funded with 9-1-1 funds in the current approved plan;~~]

[~~(D) Requests to add a call-taking position at a PSAP when the total number of call-taking positions for the region would increase;~~]

[~~(E) Requests for exceptions to Commission policy;~~]

[~~(F) Requests for additional funds; and~~]

[~~(G) As required by other Commission rule, or upon a request from the Commission.~~]

(2) Requests for amendments to the regional plan shall be submitted in writing to the Commission. The documentation required for changes will be submitted [~~an amended budget, narrative, related worksheets and a letter indicating executive approval of the amendment~~] according to Commission policy. The Commission shall take action, no fewer than four times annually, on any regional [~~Regional~~] plan amendment request submitted for approval.

(3) Emergency situations requiring amendments to regional plans that require additional funding may be presented to the Commission for review and consideration contingent upon the availability of such funds within the Program Budget level priorities in subsection (c) of this section [~~as established by the Commission~~].

(f) [~~(h)~~] Allocation of Revenue.

(1) Service Fee allocation--Consistent with Health and Safety Code sections 771.056(d)[~~,~~] and 771.078. The [~~the~~] Commission shall allocate, by contract, service fee revenue to an RPC [~~RPCs~~] contingent on the availability of appropriated funds.

(2) Equalization Surcharge Funds

(A) Within the context of Health and Safety Code section [~~Section~~] 771.056(d), the Commission shall consider any revenue insufficiencies to represent need for equalization surcharge funding support.

(B) Consistent with this rule, the Commission shall allocate, by agreement, equalization surcharge funds and service fees to RPCs based upon the Commission's statewide strategic plan and contingent upon [~~on~~] the availability of appropriated funds over a two-year period.

(C) The Commission may allocate equalization surcharge to an emergency communication district (District) based on District requests and availability of appropriated funds.

(D) Equalization surcharge funds shall be allocated first to [~~eligible~~] recipients requiring such funds for administrative budgetary purposes, followed by the Program Budget level priorities in subsection (c) of this section [~~Level I, II, and III activities in that order~~].

(E) If sufficient equalization surcharge funds are not available to fund all RPC regional [~~strategic~~] plan and District requests, funds shall be allocated to provide a consistent level of 9-1-1 service throughout the State of Texas in accordance with the Program Budget level priorities in subsection (c) of this section [~~priority levels described~~]. Allocation [~~Such allocation~~] methods may include, but are not limited to, [~~one or more of~~] the following:

(i) In reverse order of priority, reducing the number of priority level components supported with equalization surcharge funds; and/or

[~~*(ii)* Requesting that regional strategic plans be adjusted to allow for more implementation time as appropriate; and/or~~]

(ii) [~~(iii)~~] In order of priority, proportionally allocating available funds among requesting agencies.

(F) The Commission may elect to hold a balance of equalization surcharge funds in reserve for emergencies and other contingencies.

(g) [~~(i)~~] Funding Parameters for Ancillary Equipment. Ancillary Equipment includes [~~The Commission will look favorably on plan amendments for tandem and/or database service arrangements and ancillary equipment that will improve the effectiveness and reliability of 9-1-1 call delivery systems. This will include~~] the following when the equipment supports [~~is for~~] 9-1-1 call delivery: surge protection devices, emergency power equipment [~~uninterrupted power source (UPS), power backup~~], voice recorders, and paging systems [~~for 9-1-1 call delivery, security devices, and other back-up communication services~~]. An RPC [~~Regions~~] shall refer to the strategic planning guidelines for instructions as to the appropriate budget line item to which the costs for purchase and maintenance of these items should be assigned.

(1) Paging Systems. Funding for the paging systems may be approved when such systems are the most effective means of 9-1-1 call delivery [~~and they do not replace other paging or radio alerting systems. Funding for paging will be limited to systems, where alternative systems or the systems now in use cause significant delay in 9-1-1 call delivery and where existing radio systems can be modified to accommodate paging~~]. Funding for pagers (receivers) will be limited to [~~three, providing pagers to only~~] necessary core responders. The Commission will fund the actual cost of the pagers not to exceed $450 per pager. [~~within an organization (e.g., in a 15-member volunteer emergency medical group, only the on-call ambulance driver and one or two attendants would be furnished pagers).~~]

(2) Voice Recording Equipment. Voice loggers may be approved when the primary use of the equipment is in support of the 9-1-1 call-taking and call-delivery function. Extra capacity on such systems may be used for other public safety functions (such as dispatch).

(A) The Commission will normally fund voice recording capability in a PSAP to record the conversation on 9-1-1 lines and administrative or 10-digit emergency lines in order to also accommodate wireless, telematics, and Voice over IP 9-1-1 emergency calls.

(B) The Commission will normally [~~also~~] fund recording capability to record the transfer of an emergency call from the PSAP first answering the call to the agency that is responsible for providing the required emergency services.

(C) The funding of recording devices to transfer information from another recorder will be approved only upon specific justification of need.

(D) The following guidelines will apply to determine the amount to be funded by the Commission:

(i) For a 2 position PSAP, the Commission will fund the actual cost of the recording system not to exceed $15,000; or[~~.~~]

(ii) For PSAPs with 3 positions or more, the Commission will fund the actual cost of the recording system not to exceed $25,000.

(E) The Commission will consider funding of recording capabilities greater than those suggested by the guidelines when sufficient justification is provided as part of a regional [~~strategic~~] plan.

(3) [~~(j)~~] Emergency Power Equipment. Each PSAP location should be evaluated by the RPC to determine if the [~~an~~] emergency power system needs [~~is required~~] to be updated to insure the ability to answer 9-1-1 calls in the event that commercial [~~the standard~~] power [~~supply~~] is interrupted. An Emergency [~~A PSAP that receives a relatively small number of emergency calls per day may be able to provide acceptable service without the availability of ANI or ALI for short periods of time. If the same PSAP is located in a location that is subject to prolonged power outages, it may need emergency~~] power sources equipment should be evaluated and tested on a regular schedule. Other considerations include:

(A) [~~(1)~~] An uninterrupted power source (UPS) [~~Where conditions exist that indicate a need for emergency power systems to support 9-1-1 call delivery, UPS~~] should be considered as basic [~~the~~] emergency power equipment [~~system~~]. A UPS should provide continuous power to keep essential 9-1-1 system components functioning for a short period of time until generator or other emergency power equipment become operable, if necessary. A UPS primarily functions continuously to maintain a clean source of commercial power. [~~Emergency generators (power backup) should be approved only in locations with a documented history of or potential for extended interruptions of commercial power supplies. Generally, 9-1-1 funding will not be used to provide both a generator and UPS. At least 75 percent of the capacity of any UPS system or generator funded should directly support an existing (or planned) 9-1-1 system.~~]

(B) Generators should be considered as auxiliary emergency power equipment and should directly support an existing (or planned) 9-1-1 system. A generator should provide continuous power to keep 9-1-1 equipment specific to the PSAP functioning.

[~~(2) Each request for UPS must include a worksheet showing the calculations used to determine the system size and batteries required. This worksheet must identify all equipment to be powered and the operating voltage and current drain of each piece of equipment. The request for UPS must identify the load capacity of the system requested and the length of time the batteries will operate the PSAP 9-1-1 equipment. The request should also indicate whether the 9-1-1 equipment has any built-in UPS capability.~~]

[~~(3) The length of time that a UPS battery will be required to provide emergency power is a major factor in determining the cost of the UPS system. Each request for UPS must provide information justifying the size of the batteries requested. Information concerning the history of power failures at the PSAP location and the average time to restore power should be obtained from the local power company.~~]

[~~(4) If the history of power failures, or the expected restoration time, is more than can be economically justified for UPS batteries, an emergency generator can be considered. Any request for an emergency generator, in addition to a UPS, shall include a comparison of the cost of a UPS with sufficient batteries to the cost of the combination of the UPS and an emergency generator.~~]

[~~(5) There may be circumstances that justify the installation of an emergency generator (backup power), in addition to an UPS, as the primary system for a PSAP location. In these cases, the request for the emergency generator must include an explanation and comparison of the relevant costs.~~]

(C) [~~(6)~~] The following guidelines will apply to determine the amount of generator costs [~~When the operator of a 9-1-1 PSAP and the providers of emergency services desire to share the emergency power system funded by the Commission, the following guidelines will apply to determine the amount~~] to be funded by the Commission:

(i) [~~(A)~~] For a 2 position PSAP, [~~When the minimum size of emergency power system that can be purchased to serve the PSAP provides more capacity than is needed by the PSAP, the other agency may use the extra capacity and all funding will be provided by~~] the Commission will fund the actual cost of the generator not to exceed $25,000.

(ii) [~~(B)~~] For PSAPs with 3 positions or more, [~~When the PSAP requires a given size of emergency power system, and the other agency requires additional capacity,~~] the Commission will fund the actual cost of the generator not to exceed $40,000 [~~size of emergency power equipment needed to supply the PSAP alone and the other agency will fund all additional capacity~~].

(4) [~~(7)~~] Funding may be approved by the Commission for surge protection devices when they are used for protection of 9-1-1 specific electronic equipment. A complete evaluation of grounding at 9-1-1 PSAPs may be funded by the Commission [~~Documented justification must be provided~~].

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

Filed with the Office of the Secretary of State on April 3, 2006.

TRD-200601985
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 305-6933

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.781

The Health and Human Services Commission (HHSC) proposes an amendment to §355.781, concerning the reimbursement methodology for Rehabilitative Services, in Chapter 355, Reimbursement Rates.

BACKGROUND AND PURPOSE

The purpose of the amendment to this Subchapter is to identify the department (formerly the Texas Department of Mental Health and Mental Retardation [TDMHMR] or successor agency) as the Department of State Health Services (DSHS) and remove any references to "TDMHMR." Also, due to the restoration of the general counseling benefit to all Medicaid recipients, the reference to rehabilitative counseling and psychotherapy is removed from the rule. The rule is further amended to allow the provision of skills training in a group format to a child or adolescent.

FISCAL NOTE

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that the general revenue savings to the Department of State Health Services are as follows: approximately $134,351.55 each year for the fiscal years 2007-2011. There will be no effect to local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of enforcing or administering the amendment. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Pursuant to Government Code §2001.022, a review has been made and there is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ed White, Director of Rate Setting and Forecasting, in accordance with Government Code §2001.024, has determined that the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to ensure the availability of mental health rehabilitative services, that the need for such services is appropriately assessed and authorized, that the uniqueness of services is clearly delineated between adult and child, that such services will be provided by qualified and trained staff, that correctly provided and documented services will be appropriately reimbursed by the department and that a fair hearings process is available.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Lupita Villarreal, Rate Analyst, Rate Analysis-Acute Care and Cost Reporting, Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200, (512) 491-1178 or by email to lupita.villarreal@hhsc.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amendment is proposed under Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties, and §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

§355.781. Rehabilitative Services Reimbursement Methodology.

(a) General information.

(1) The Texas Health and Human Services Commission (HHSC) will reimburse qualified rehabilitative services providers for rehabilitative services provided to Medicaid-eligible persons with mental illness.

(2) The HHSC establishes the reimbursement rate. The HHSC sets reimbursement rates that reflect cost-effective operations and are within State appropriation constraints.

(b) Definitions.

(1) Interim rate--Rate paid to a rehabilitative services provider based on cost reports prior to settle-up conducted in accordance with subsection (d)(4) of this section.

(2) Service type--Types of Medicaid reimbursable rehabilitative services as specified in program rules for the following:

(A) Day programs for acute needs--adult;

(B) Crisis intervention services--individual-child/adolescent and adult;

(C) Medication training and support--individual-child/adolescent and adult;

(D) Medication training and support--group-adult;

(E) Medication training and support--group-child/adolescent;

(F) Psychosocial rehabilitative services--individual-adult;

(G) Psychosocial rehabilitative services--group-adult;

[~~(H) Rehabilitative counseling and psychotherapy--individual-adult;~~]

[~~(I) Rehabilitative counseling and psychotherapy--group-adult;~~]

(H) [~~(J)~~] Skills training and development--individual-child/adolescent and adult; [~~and~~]

(I) [~~(K)~~] Skills training and development--group-adult;and[~~.~~]

(J) Skills training and development-group-child/adolescent.

(3) Unit of service--The amount of time an individual, eligible for Medicaid rehabilitative services or non-Medicaid rehabilitative services (or parent or guardian of the person of an eligible minor), is engaged in face-to-face contact with a person described in program rules established by The Department of State Health Services (DSHS) [~~TDMHMR or its successor agency~~]. The units of service are as follows:

(A) Day programs for acute needs--45-60 continuous minutes;

(B) Crisis intervention services--15 continuous minutes;

(C) Medication training and support--15 continuous minutes;

(D) Psychosocial rehabilitative services--15 continuous minutes; and

[~~(E) Rehabilitative counseling and psychotherapy--15 continuous minutes; and~~]

(E) [~~(F)~~] Skills training and development--15 continuous minutes.

(c) Reporting of Costs.

(1) Cost reporting. Rehabilitative services providers must submit information quarterly, unless otherwise specified, on a cost report formatted according to HHSC's specifications. Rehabilitative services providers must complete the cost report according to §§355.101, 355.102, 355.103, 355.104, and 355.105 of this title (relating to Introduction, General Principles of Allowable and Unallowable Costs,

Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Reporting period and due date. Rehabilitative services providers must prepare the cost report to reflect rehabilitative services provided during the designated cost report-reporting period. The cost reports must be submitted to the HHSC no later than 45 days following the end of the designated reporting period unless otherwise specified by the HHSC.

(3) Extension of the due date. The HHSC may grant extensions of due dates for good cause. A good cause is one that the rehabilitative services provider could not <u>reasonably</u> [~~reasonable~~] be expected to control. Rehabilitative services providers must submit request for extensions in writing. Requests for extensions must be received by HHSC prior to the cost report due date. HHSC will respond to requests within 15 days of receipt.

(4) Failure to file an acceptable cost report. If a rehabilitative services provider fails to file a cost report according to all applicable rules and instructions, HHSC will notify <u>DSHS</u> [~~TDMHMR or its successor agency~~] to place the rehabilitative services provider on vendor hold until the rehabilitative services provider submits an acceptable cost report.

(5) Allocation method. If allocations of cost are necessary, rehabilitative services providers must use and be able to document reasonable methods of allocation. HHSC adjusts allocated costs if HHSC considers the allocation method to be unreasonable. The rehabilitative services provider must retain work papers supporting allocations for a period of three years or until all audit exceptions are resolved (whichever is longer).

(6) Cost report certification. Rehabilitative services providers must certify the accuracy of cost reports submitted to HHSC in the format specified by HHSC. Rehabilitative services providers may be liable for civil and/or criminal penalties if they misrepresent or falsify information.

(7) Cost data supplements. HHSC may require additional financial and statistical information other than the information contained on the cost report.

(8) Allowable and unallowable costs. Cost reports may only include costs that meet the requirements as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs).

(9) Review of cost reports. HHSC reviews each cost report to ensure that financial and statistical information submitted conforms to all applicable rules and instructions. The review of the cost report includes a desk review. HHSC reviews all cost reports according to the criteria specified in §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). If a rehabilitative services provider fails to complete the cost report according to instructions or rules, HHSC returns the cost report to the rehabilitative services provider for proper completion. HHSC may require information other than that contained in the cost report to substantiate reported information. Providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments).

(10) On-site audits. HHSC may perform on-site audits on all rehabilitative services providers that participate in the Medicaid program for rehabilitative services. HHSC determines the frequency and nature of such audits but ensures that they are not less than that required by federal regulations related to the administration of the program.

(11) Notification of exclusions and adjustments. HHSC notifies rehabilitative services providers of exclusions and adjustments to reported expenses made during desk reviews and on-site audits of cost reports.

(12) Reviews and administrative hearings. Rehabilitative services providers may request an informal review and, if necessary, an administrative hearing to dispute the action taken by HHSC1 under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(13) Access to records. Each rehabilitative services provider must allow access to all records necessary to verify cost report information submitted to HHSC. Such records include those pertaining to related-party transactions and other business activities engaged in by the rehabilitative services provider. If a rehabilitative services provider does not allow inspection of pertinent records within 14 days following written notice HHSC will notify <u>DSHS</u> [~~TDMHMR or its successor agency~~] to place the rehabilitative services provider on vendor hold until access to the records is allowed. If the rehabilitative services provider continues to deny access to records, <u>DSHS</u> [~~TDMHMR or its successor agency~~] may terminate the rehabilitative services provider agreement with the rehabilitative services provider.

(14) Record keeping requirements. Rehabilitative services providers must maintain service delivery records and eligibility determination for a period of five years or until any audit exceptions are resolved (whichever is later). Rehabilitative services providers must ensure that records are accurate and sufficiently detailed to support the financial and statistical information contained in cost reports.

(15) Failure to maintain adequate records. If a rehabilitative services provider fails to maintain adequate records to support the financial and statistical information reported in cost reports, HHSC allows 30 days for the rehabilitative services provider to bring record keeping into compliance. If a rehabilitative services provider fails to correct deficiencies within 30 days from the date of notification of the deficiency, HHSC will notify <u>DSHS</u> [~~TDMHMR or its successor agency~~] to terminate the rehabilitative services provider agreement with the rehabilitative services provider.

(d) Reimbursement determination. HHSC determines reimbursement according to §355.101 of this title (relating to Introduction). Rehabilitative services providers are reimbursed a uniform, statewide interim rate with a cost-related year-end settle-up. The HHSC determines reimbursement in the following manner:

(1) Inclusions of certain reported expenses. Rehabilitative services providers must ensure that all allowable costs are included in the cost report.

(2) Data collection. The HHSC collects several different kinds of data. These include the number of units of service that individuals receive and cost data, including direct costs, programmatic indirect costs, and general and administrative overhead costs. These costs include salaries, benefits, and other costs. Other costs include non-salary related costs such as building and equipment maintenance, repair, depreciation, amortization, and insurance expenses; employee travel and training expenses; utilities; and material and supply expenses.

(3) Interim rate methodology. The interim rate is determined biennially for each service type based on cost reports.

(A) The HHSC projects and adjusts reported costs from the historical reporting period to determine the interim rate for the prospective reimbursement period. Cost projections adjust the allowed historical costs based on significant changes in cost-related conditions anticipated to occur between the historical cost period and the prospective reimbursement period. Changes in cost-related conditions include, but are not limited to, inflation or deflation in wage or price, changes in program utilization and occupancy, modification of federal or state regulations and statutes, and implementation of federal or state court orders and settlement agreements. Costs are adjusted for the prospective reimbursement period by a general cost inflation index as specified in §355.108 of this title (relating to Determination of Inflation Indices).

(B) For each settle-up service, each rehabilitative services provider's projected cost per unit of service is calculated. The mean rehabilitative services provider cost per unit of service is calculated, and the statistical outliers (those rehabilitative services providers whose unit costs exceed plus or minus (+/-) two standard deviations of the mean rehabilitative services provider cost) are removed. After removal of the statistical outliers, the mean cost per unit of service is calculated. This mean cost per unit of service becomes the recommended reimbursement per unit of service.

(4) Settle-up process. At the end of each reimbursement period, the HHSC will compare the amount reimbursed at the interim rate for each settle-up service and the rehabilitative services provider's costs for each service, as submitted on its cost report in accordance with subsection (c) of this section.

(A) Rehabilitative service provider's, whose costs are less than 95% of the amount reimbursed at the interim rate, will be required to pay to DSHS [~~TDMHMR or its successor agency~~] 100% of the difference between its allowable costs and 95% of the amount reimbursed at the interim rate for each settle-up service. DSHS [~~TDMHMR or its successor agency~~] will notify the rehabilitative services provider of the amount due by certified mail and the rehabilitative services provider will remit the repayment amount within 60 days of notification. DSHS [~~TDMHMR or its successor agency~~] will apply a vendor hold on Medicaid payments to a rehabilitative services provider for not making the payment to DSHS [~~TDMHMR or its successor agency~~] within 60 days of receiving notice.

(B) If a rehabilitative services provider's costs exceed the amount reimbursed at the interim rate, DSHS [~~TDMHMR or its successor agency~~] will reimburse the rehabilitative services provider the difference between its allowable costs and the reimbursement at the interim rate up to 125% of the interim rate for each settle-up service. DSHS [~~TDMHMR or its successor agency~~] will notify the rehabilitative services provider of the amount owed to the provider via certified mail. DSHS [~~TDMHMR or its successor agency~~] will make payment within 30 days of the date the notice was received, as indicated by the certified mail receipt.

(5) Adjustments to the reimbursement determination methodology. HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs as described in §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

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 April 3, 2006.

TRD-200601974
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.420

The Public Utility Commission of Texas (commission) proposes an amendment to §26.420(f), relating to Assessments for the TUSF. The proposed amended rule will revise the existing rule to reflect the current assessment methodology adopted by the commission in Docket Number 21208 (see Docket Number 21208, Order Regarding TUSF Assessment of Intrastate Telecommunications Services Receipts, July 29, 2004). The Order in Docket Number 21208 was adopted in response to the decision of the United States Court of Appeals for the Fifth Circuit in *AT&T Corp. v. Public Utility Commission of Texas*, 373 F. 3d 641 (5th Cir. 2004) (*AT&T Decision*). Project Number 28708 is assigned to this proceeding.

Rosemary McMahill, Sr. Policy Analyst, Communications Industry Oversight Division, and Jim Tourtelott, Staff Attorney, Telecommunications Legal Section, have determined that, for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. McMahill and Mr. Tourtelott have determined that, for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing this section will be the ability of the commission to ensure that providers are complying with the TUSF assessment mechanism and the *AT&T Decision*. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is some anticipated economic cost to persons who are required to comply with the section as proposed, but the public benefit of ensuring that providers are complying with the TUSF assessment mechanism should outweigh those costs.

Ms. McMahill and Mr. Tourtelott have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Comments on the proposed section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. All comments should refer to Project Number 28708.

This amended section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §56.023, which requires the commission to adopt procedures to fund the TUSF.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, and §56.023.

§26.420. Administration of Texas Universal Service Fund (TUSF).

(a) - (e) (No change.)

(f) Assessments for the TUSF.

(1) Providers subject to assessments. The TUSF assessments shall be payable by all telecommunications providers having access to the customer base; including but not limited to wireline and wireless providers of telecommunications services.

(2) Definitions. For the purposes of this section the following definitions apply:

(A) Actual intrastate telecommunications services receipts--Telecommunications services receipts that are clearly identifiable as intrastate telecommunications services receipts, as defined in subparagraph (E) of this paragraph.

(B) FCC--means the Federal Communications Commission.

(C) Interstate communications--Has the meaning assigned by 47 U.S.C. §153(22).

(D) International communications--Has the meaning assigned by 47 U.S.C. §153(17) (foreign communications).

(E) Intrastate telecommunications services receipts--Taxable telecommunications services receipts as reported by the telecommunications provider under Chapter 151 of the Texas Tax Code, with the exception of:

(i) Pay telephone service revenues received by providers of pay telephone services, which are exempt from the TUSF assessment pursuant to PURA §56.022(c)(2);

(ii) Telecommunications services receipts from interstate communications and international communications included in telecommunications services receipts reported under Chapter 151 of the Texas Tax Code; and

(iii) TUSF surcharges collected from customers.

(F) Receipts--Has the meaning assigned by Texas Tax Code §151.007.

(G) Safe-Harbor intrastate telecommunications services receipts--Means intrastate telecommunications receipts calculated by applying a commission-ordered percentage to telecommunications services receipts that are not clearly identifiable as intrastate.

(H) Telecommunications provider--Has the meaning assigned by PURA §51.002(10).

(I) Telecommunications services--Has the meaning assigned by Texas Tax Code §151.0103.

(3) [~~(2)~~] Basis for assessments. Assessments will be based upon the following:

(A) Actuals. Effective January 1, 2007, assessments [~~Assessments~~] shall be made to each telecommunications provider based upon its monthly taxable actual intrastate [~~taxable~~] telecommunications services receipts reported by that telecommunications provider under Chapter 151 of the Texas Tax Code.

(B) Commission-Ordered Safe Harbor. A telecommunications provider that is unable to calculate actual intrastate telecommunications services receipts by January 1, 2007, and does not meet the *de minimus* exemption in subparagraph (C) of this paragraph, may request, and the commission may grant for good cause, the modification or waiver of the requirement set forth in subparagraph (A) of this paragraph, to allow the telecommunications provider to calculate all or some of its intrastate taxable telecommunications receipts using the relevant commission-ordered safe-harbor percentage. Requests for waiver will be subject to administrative review unless the presiding officer determines at any point during the review that the request should be docketed. The presiding officer will issue an order approving, denying or docketing the request for waiver within 180 calendar days of the filing date of the waiver request.

(i) A request for waiver must contain, at a minimum:

(I) an affidavit from a corporate officer of the telecommunications provider attesting to the fact that the telecommunications provider is unable to calculate all or some of its actual intrastate telecommunications services receipts and, if applicable, that the telecommunications provider is using a safe harbor authorized by the FCC;

(II) a date by which the telecommunications provider will be able to calculate actual intrastate telecommunications services receipts;

(III) an explanation detailing why the telecommunications provider is unable to calculate actual intrastate telecommunications services receipts and why a waiver is necessary;

(IV) a detailed description of the safe-harbor percentage that is requested and how it will be applied;

(V) if applicable, a compliance tariff filing pursuant to paragraph (6)(C) of this subsection; and

(VI) any other information that the telecommunications provider believes will aid in rendering of a decision.

(ii) If a telecommunications provider requests a permanent waiver from reporting its TUSF assessment based on actual intrastate telecommunications services receipts, then the telecommunications provider must file a waiver containing all elements in clause (i) of this subparagraph, as well as an explanation detailing why a permanent waiver is required, and why it is in the public interest.

(iii) A telecommunications provider that has been granted a waiver shall apply, for the duration of that waiver, a safe-harbor percentage to its telecommunications services receipts using one of the methods described in subclauses (I) or (II) of this clause as follows:

(I) If a telecommunications provider is reporting interstate communications and international communications revenues for assessment for the federal universal service fund based on an FCC safe-harbor percentage, then the telecommunications provider shall apply the inverse of that percentage to its telecommunications services receipts as reported under Chapter 151 of the Texas Tax Code. The resulting total will be the telecommunications provider's safe-harbor-calculated total intrastate telecommunications services receipts to which the TUSF assessment rate shall apply pursuant to paragraph (4) of this subsection.

(II) If a telecommunications provider is not using an FCC safe-harbor percentage, the telecommunications provider shall apply a commission-ordered safe harbor percentage to its telecommunications services receipts under Chapter 151 of the Texas Tax Code as described in its waiver request approved by the commission. The resulting total will be the telecommunications provider's safe-harbor-cal-

culated intrastate telecommunications services receipts to which the TUSF assessment rate shall apply pursuant to paragraph (4) of this subsection.

(iv) If a telecommunications provider that has been granted a waiver seeks to change its safe-harbor assessment methodology, or seeks an extension of its existing waiver, it must file another waiver request with the commission.

(v) A telecommunications provider may, at any time during the duration of its waiver and upon notice to the commission and the TUSF administrator, change its methodology to assess actual intrastate telecommunications services receipts. This will terminate any existing waiver.

[~~(B) Pay telephone service revenues received by providers of pay telephone services are exempt from the TUSF assessment pursuant to the Public Utility Regulatory Act §56.022(c)(2).~~]

(C) *De minimus* exemption. A telecommunications provider that is unable to calculate actual intrastate telecommunications services receipts by January 1, 2007, and whose TUSF assessment is less than $500 per month using the relevant commission-ordered safe-harbor percentage, is not required to file a waiver request pursuant to subparagraph (B) of this paragraph.

(D) [~~(C)~~] Intrastate telecommunications services receipts [~~Revenue~~] received by telecommunications providers from telecommunications services supplied to pay telephone providers for the provision of pay telephone services are [~~is~~] subject to TUSF assessment.

(4) [~~(3)~~] Assessment. Each telecommunications provider shall pay its TUSF assessment each month [~~as calculated using the following procedures.~~]

[~~(A) Calculation of assessment rate. The TUSF administrator shall determine an assessment rate to be applied to all telecommunications providers on a periodic basis approved by the commission.~~]

[~~(B)~~] [~~Calculation of assessment amount. Payments to the TUSF shall be computed~~] by multiplying the commission-approvedassessment rate [~~determined pursuant to subparagraph (A) of this paragraph~~] by the basis for assessments as determined pursuant to paragraph (3) [~~(2)~~] of this subsection.

(5) [~~(4)~~] Reporting requirements. Each telecommunications provider shall [~~be required to~~] report its taxable intrastate telecommunications services receipts under Chapter 151 of the Tax Code to [~~as required by~~] the commission or the TUSF administrator. When reporting its intrastate telecommunications services receipts, each telecommunications provider shall report its total taxable telecommunications services receipts under Chapter 151 of the Tax Code, and indicate which methodology or methodologies (*i.e.*, actual and/or commission-ordered safe-harbor percentage) it used to arrive at its total intrastate telecommunications services receipts.

(6) [~~(5)~~] Recovery of assessments. A telecommunications provider may recover the amount of its TUSF assessment based on its intrastate telecommunications services receipts [~~only~~] from its retail customers who are subject to tax under Chapter 151 of the Texas Tax Code, except for Lifeline and/or [~~, and~~] Link Up services. For purposes of the recovery of the TUSF assessment, pay telephone providers are considered retail customers subject to Chapter 151 of the Texas Tax Code. The commission may order modifications in a telecommunications provider's method of recovery.

(A) Retail customers' bills. In the event a telecommunications provider chooses to recover its TUSF assessment through a surcharge added to its retail customers' bills:[~~;~~]

(i) the surcharge must be listed on the retail customers' bills as "Texas Universal Service"; and

(ii) the surcharge must be assessed as a percentage of intrastate telecommunications services receipts on every retail customers' bill, except Lifeline and/or [~~and~~] Link Up services.

(B) Commission approval of surcharge mechanism. An ILEC choosing to recover the TUSF assessment through a surcharge on its retail customers' bills must file for commission approval of the surcharge mechanism.

(C) Tariff and/or price sheet changes. A certificated telecommunications utility [~~provider~~] choosing to recover the TUSF assessment through a surcharge on its retail customers' bills shall file the appropriate changes as necessary to its tariff and/or price sheet and provide supporting documentation for the method of recovery.

(D) Recovery period. A single universal service fund surcharge shall not recover more than one month of assessments.

(7) [~~(6)~~] Disputing assessments. Any telecommunications provider may dispute the amount of its TUSF assessment. The telecommunications provider should endeavor to first resolve the dispute with the TUSF administrator. If the telecommunications provider and the TUSF administrator are unable to satisfactorily resolve their dispute, either party may petition the commission to resolve the dispute. Pending final resolution of disputed TUSF assessment rates and/or amounts, the disputing telecommunications provider shall remit all undisputed amounts to the TUSF administrator by the due date.

(g) - (j) (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 March 30, 2006.

TRD-200601922
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 82. BARBERS

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§82.10, 82.20, 82.21, 82.26, 82.50, 82.51, 82.53, 82.70, 82.71, 82.72, 82.73, 82.80, 82.100, 82.101, 82.102, 82.104, 82.106, 82.107, 82.108, 82.114, and 82.120, regarding the barber program. The Department also proposes a new rule at 16 Texas Administrative Code, §82.74 and the repeal of a rule at 16 Texas Administrative Code, §82.32 regarding the barber program.

These proposed new, amended, and repealed rules are necessary to implement provisions of Senate Bill 411, 79th Legislature, Regular Session. Senate Bill 411 abolished the Texas State Board of Barber Examiners and transferred the licensing and regulation of barbering to the Department. These proposed rules are part of a third phase of rulemaking to implement the transfer of the barber program to the Department. The first and second phases of Department rules concerning the barber program became effective on December 8, 2005 and March 1, 2006, respectively. This phase of proposed rule changes reorganizes provisions for greater clarity and readability, simplifies definitions, and updates rule requirements, particularly reporting requirements for barber schools and curriculum requirements for obtaining barber licenses.

The headings of §§82.20, 82.26, 82.70, and 82.71 are amended for greater consistency.

Section 82.10 is amended to update definitions for better clarity and to conform to current law. In the definition of "beard" the phrase has been deleted that a beard shall only be trimmed, shaped or cut by a licensed barber. One reason for this change is that this part of the definition is no longer consistent with the definition of "cosmetology" in Texas Occupations Code, §1602.002, which allows a licensed cosmetologist to treat a person's beard or mustache by arranging, beautifying, coloring, processing, styling, or trimming. However, a cosmetologist may not shave a beard or mustache. Another reason for the change is that a definition is not the appropriate place to state a substantive prohibition on conduct.

Section 82.10 is also amended to add the word "horizontal" to the definition of "line of demarcation between 'the hair' and 'the beard'" for clarity. The definition of "sideburn" is reworded for clarity. In addition, the sentence stating that only a licensed barber shall trim, shape or cut the sideburns with any type of razor is deleted. This portion of the definition appears to be inconsistent with the statutory definition of "cosmetology," which allows a licensed cosmetologist to trim, shape or cut hair and mustaches or beards. The statutory definitions of "cosmetology" and "barbering" already prescribe that only a barber, and not a cosmetologist, may for compensation shave a person's beard or mustache.

Section 82.21(b) is amended to delete the word "teacher" because this provision does not in fact apply to a barber teacher. The teacher curriculum is only 1,000 hours, so a teacher cannot take advantage of the early examination provision. Subsection (f) is amended to add that the Department may require parental approval for practical examination models under 18 years of age. This provision is necessary because the minimum age of a model was lowered to 16 in a previous rulemaking. The Department needs the ability to ensure that a minor has parental consent to participate in a Department examination as a model. Subsection (i) is amended to simplify the language of that subsection and delete unnecessary words.

Section 82.32 is repealed because the substance of that section is being incorporated into new §82.74.

Section 82.50(b) is amended to clarify that, with the exception of initial inspections, the Department may conduct inspections of barber establishments without advance notice.

Section 82.51 is amended to clarify that the inspections referred to are "initial" inspections that occur before operation of an establishment, when an establishment relocates, or when a school changes ownership.

A grammatical change is made to §82.53(a).

Section 82.70(a) is amended to add barbershop and manicurist specialty shop to the list of licensees that may advertise in the yellow pages under "Barber." In addition, the text of subsection (b) is deleted. No one is required to take a barber refresher course, and the Department believes that it is unnecessary to prohibit a barber who is enrolled in a refresher course from being employed by or serving as the manager or instructor of a school. The remaining subsections are re-lettered.

New language is added to §82.71(g) to require, for the use of individuals who work in the shop, that a shop provide at least one sink, wash basin, or hand sanitizer for every three chairs. This requirement is similar to language that was in the rules prior to changes in sanitation provisions effective March 1, 2006. Licensees are required to wash their hands or use a liquid hand sanitizer in between each client, and the Department believes that it is necessary also to require shops to have adequate facilities for doing so. The new language of subsection (h) is identical to provisions in §§82.70 and 82.72, specifying who may advertise in the yellow pages under "Barber." The new language of subsection (k) requires an establishment to display, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent Department inspection report. This requirement is necessary to keep public patrons of the establishment informed of the establishment's inspection results. Other changes to the section are minor wording changes for consistency.

Section 82.72 is amended to delete the optional student kit equipment from subsection (h). The Department believes it is unnecessary to list optional equipment in the rule, only equipment that is required. Deletion of this language should not have an effect on current school practices. In subsection (m) minor technical revisions are made, the obsolete word "photostatic" is deleted, and the requirement is deleted to submit two photographs of the student with a student permit application. The photographs are not needed with the application because the Department requires a government-issued photo identification for an examinee to gain entrance to an examination, and the proposed amendment in subsection (n) would require a school to affix the student's photograph to the student permit. New language in Subsection (n) is relocated from §82.73, with the modification regarding the school affixing the student's photograph to the permit. Subsection (o) is new language that requires a barber school to maintain an album of student permits, rather than the student displaying the permit at the student's station. Subsection (r) is amended to conform to provisions in §§82.70 and 82.71 concerning licensee advertising in the yellow pages under "Barber." Non-substantive revisions are made to subsections (w) and (x) for consistency in terminology.

New subsection (y) of §82.72 requires a school to submit an electronic record of each student's accrued hours to the Department no less than once per 15 days. However, a school may seek the Department's approval for a delay in electronic submission on a case-by-case basis. In addition, the Department may approve a school submitting required data in an alternate manner if the school demonstrates that the electronic reporting requirements would cause a substantial hardship to the school. Because of a statutory change, schools no longer submit written, monthly progress reports on student attendance to the Department. The electronic reporting requirement is necessary so that the Department can obtain information on students' accrued hours in a timely and efficient manner. New subsection (z) requires that a school maintain the monthly progress report of student attendance, which is required to be maintained by Texas Occupations Code, §1601.561(a), throughout the student's enrollment and for 48 months after the student completes the curriculum, withdraws, or is terminated. New subsection (aa) requires an establishment to display, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent Department inspection report. This requirement is necessary to keep public patrons and students of the establishment informed of the establishment's inspection results.

Section 82.73 is amended to add new language to subsection (a) that a student shall not engage in dishonesty or misrepresentation relating to a student's accrued hours. As licensees of the Department, students should be held responsible for dishonesty related to accruing hours. Other provisions are deleted and with some modification, relocated to other sections.

For better readability, new §82.74 consolidates, with some modification, existing rule provisions concerning withdrawal, reentry, or transfer of students. Subsection (a) requires that a school electronically submit a student's withdrawal or termination to the Department. The current rule does not require this information to be submitted electronically. The time frame for the school submitting this information would be 15 days after the withdrawal or termination of the student, as opposed to the current seven days.

Section 82.80(b) is amended to eliminate the renewal fee for a student permit. A student permit expires after two years, so a student who requires a permit for longer than two years would need to apply for and receive a renewed permit. However, no fee would be charged for the renewal.

Section 82.100 is amended to remove from definitions the word "hard" from the phrase "hard, nonporous surfaces." This change is necessary for clarification because some surfaces that are non-porous and can be disinfected are not hard surfaces. Additionally, the definition of "disinfectant" is amended to make the reference to chlorine bleach solution consistent with other references to chlorine bleach.

Section 82.101(b) is amended to remove language that may be inconsistent with other references to chlorine bleach.

Section 82.102(c) is amended to clarify that other rules may require that chairs or dryers be disinfected prior to use for each client. This clarification is necessary because proposed amendments to other health and safety rules would require chairs to be disinfected in certain situations. Subsection (l) is amended to add that towels must be washed in hot water and chlorine bleach. To protect the health and safety of customers of barber establishments, the Department believes that the rules need to give direction to licensees on how towels are to be cleaned.

Section 82.104 is amended to add that facial chairs and beds are to be disinfected prior to providing service to each client. Based on input the Department has received concerning sanitation, the Department believes that a requirement to disinfect facial chairs and beds is needed. Language is also added that the chair or bed must be made of or covered in a non-porous material that can be disinfected. This language is necessary to ensure that the chair or bed is capable of being disinfected.

Section 82.106(d) is amended to clarify that certain implements must be sterilized, in addition to being cleaned and disinfected, in accordance with Texas Occupations Code, §§1601.506(e) and 1603.352(a). Corrections are made to the list of implements.

Section 82.107 is amended to add that electric drill bits used in manicure and pedicure services must be sterilized. Texas Occupations Code, §§1601.506(e) and 1603.352(a) require sterilization of all nondisposable instruments used to perform manicure and pedicure services.

Section 82.108 is amended to add a new subsection (g), which requires that footspa chairs shall be cleaned and disinfected prior to providing service to each client. The Department believes that this requirement is necessary because of the risk of infectious and contagious diseases being transmitted by footspas. Language is also added that the chair must be made of or covered in a non-porous material that can be disinfected. This language is necessary to ensure that the chair is capable of being disinfected.

Section 82.114(b) is amended to clarify that carpet in barber establishments is not limited to reception areas. Carpet is permitted in all areas except the specified areas in which floors are required not to be porous or absorbent.

Section 82.120 is amended to update curriculum requirements. Specific time requirements for full-time and part-time student teachers are deleted as unnecessary. The Department believes that the requirement to complete the course of instruction in not less than 26 weeks is sufficient. Wording throughout the rule is simplified and made more consistent. Hours of credit for school orientation is deleted and added to other, more substantive, topics. The curriculum for a class A barber certificate is amended to require eight hours of manicuring, rather than allowing manicuring to be an optional part of the curriculum. This change is necessary because, under Texas Occupations Code, Chapter 1601, a class A barber may perform any act of barbering, including manicuring. Subsection (j) states that the changes to §82.120 take effect September 1, 2006.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed rules are in effect there will be no cost to state government and no cost to local government as a result of enforcing or administering the proposed rules. Although there will be a cost to the Department to develop electronic school reporting, the Department anticipates that the cost will be absorbed by current personnel and computer resources, especially in anticipation of future saved personnel costs. Additionally, although there may be some minimal loss of revenue to the Department because of the elimination of the student permit renewal fee, the Department anticipates a small volume of students who will study a barbering curriculum in excess of the two-year student permit term.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be effective health and safety rules, efficient Department operations with electronic reporting, and rules that are easier to read and understand.

Mr. Kuntz has determined that there will be some economic cost to school permit holders, including small or micro-business, as a result of complying with the proposed electronic reporting rules. The Department anticipates that this cost will not be significant. Permit holders required to comply with electronic reporting may report by an alternate method approved by the Department if compliance with the proposed rules causes a substantial hardship.

Comments on the proposal may be submitted to Tamala Fletcher, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: tamala.fletcher@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §§82.10, 82.20, 82.21, 82.26, 82.50, 82.51, 82.53, 82.70 - 82.74, 82.80, 82.100 - 82.102, 82.104, 82.106 - 82.108, 82.114, 82.120

The amendments and new rules are proposed under Texas Occupations Code, Chapters 51, 1601 and 1603 which authorizes the Department to adopt rules as necessary to implement these chapters. In particular, the rules implement provisions of Senate Bill 411, 79th Legislature, Regular Session.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1601 and 1603. No other statutes, articles, or codes are affected by the proposal.

§82.10. Definitions.

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

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

(5) Beard--The beard extends from below the line of demarcation and includes all facial hair regardless of texture [~~and shall only be trimmed, shaped or cut by a licensed barber~~].

(6) - (12) (No change.)

(13) Line of Demarcation between "the hair" and "the beard"--The demarcation boundary between scalp hair ("the hair") and facial hair ("the beard") is a horizontal line drawn from the bottom of the ear.

(14) - (15) (No change.)

(16) Sideburn--Part [~~A sideburn may be part~~] of a hair cut or style that is a continuation of the natural scalp hair growth, does [~~and must~~] not extend below the line of demarcation [~~bottom of the ear lobe~~], and is [~~must~~] not [~~be~~] connected to any other bearded area on the face. [~~Only a licensed barber shall trim, shape or cut the sideburns with any type of razor.~~]

§82.20. License [~~Licensing, Permitting and Certification~~] Requirements--Individuals.

(a) To be eligible for a Class A Barber Certificate, a Teacher's Certificate, Barber Technician License, Manicurist License, or Student Permit, an applicant must:

(1) submit the application on a Department approved form;

(2) pass the applicable examination;

(3) pay the fee required under §82.80; and

(4) meet other applicable requirements of the Act and this section.

(b) Class A Barber Certificate--To be eligible for a Class A barber certificate, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.253;

(c) Teacher's Certificate--To be eligible for a teacher's certificate, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.254;

(d) Barber Technician License--To be eligible for a Barber Technician License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.256;

(e) Manicurist License--To be eligible for a Manicurist license, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.257;

(f) Student Permit--To be eligible for a Student permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.260;

(g) Registered Examination Proctor--To be eligible for an Examination Proctor registration, an applicant must:

(1) have held an active teacher's certificate for at least two of the five years preceding the application;

(2) hold an active teacher's certificate;

(3) obtain a certificate of completion from a department approved training course;

(4) submit a completed application for initial registration on a form approved by the department; and

(5) pay the applicable fee under §82.80.

(h) A license application is valid for one year from the date it is filed with the department.

§82.21. License Requirements--Examinations.

(a) (No change.)

(b) For a Class A barber [~~or teacher~~] certificate, a student is eligible to take the written examination when the department receives proof of completion of 1,000 curriculum hours, as specified by Texas Occupations Code, §1603.255, relating to early examination.

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

(f) The examinee shall provide a model, of 16 years of age or older, on whom to demonstrate the practical work. The department may require parental approval for models under 18 years of age.

(g) - (h) (No change.)

(i) The department will notify an examinee if the examinee fails either the written or practical [~~or both portions of the~~] examination. [~~If an examinee fails any part of the examination, he or she will be required to retake the entire failed portion, either written or practical, or both portions in the event the entire examination was failed.~~]

(j) (No change.)

§82.26. License[~~Licensing, Permitting, Certification and Registration~~] Requirements--Renewals.

To renew a license, permit, registration or certificate, an applicant must:

(1) continue to meet the requirements for license, permit, registration or certificate issuance;

(2) comply with other applicable requirements of the Act or these rules;

(3) submit a completed renewal application on a form approved by the department; and

(4) pay the applicable fee under §82.80.

§82.50. Inspections--General.

(a) (No change.)

(b) Inspections shall be performed during the normal operating hours of the barber establishments. Except for initial inspections, the department may conduct inspections under the Act and this chapter without advance notice.

(c) - (d) (No change.)

§82.51. Initial Inspections--Inspection of Barber Establishments Before Operation.

(a) (No change.)

(b) The barber establishment owner shall request an initialinspection from the department and pay the permit fee required by §82.80. In order for the department to schedule the initial inspection in a timely manner, the initial inspection request and fee should be submitted to the department no later than forty five (45) calendar days prior to the opening date of the establishment.

(c) Upon receipt of the owner's request and the permit fee, the department shall schedule the initial inspection date and notify the owner.

(d) Upon completion of the initial inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the barber establishment meets or does not meet the minimum requirements of the Act and this chapter.

(e) - (f) (No change.)

§82.53. Risk-Based Inspections.

(a) Risk-based inspections are those required in addition to periodic inspections required under §82.52, for barber establishments determined by the department to be a greater risk to public health or safety. To [~~In order to~~] determine which establishments will be subject to risk-based inspections, the department has established criteria and frequencies for inspections. The owner of the barber establishment shall pay the fee required under §82.80 for each risk-based inspection, in a manner established by the department.

(b) - (g) (No change.)

§82.70. Responsibilities of Individuals [~~Individual License Holders~~].

(a) Only a permitted barber school, barbershop, or manicurist specialty shop or a licensed barber may advertise in the yellow pages of the telephone directory under "Barber."

(b) [~~A licensed barber who is enrolled in a barber refresher course cannot at the same time be employed or serve as a manager or instructor in the school.~~]

[~~(c)~~] License holders, including Class A barbers, teachers, barber technicians and manicurists are responsible for compliance with the health and safety standards of this chapter.

(c) [~~(d)~~] Licensees shall wear clean top and bottom outer garments and footwear while performing services authorized under the Act. Outer garments include tee shirts, blouses, sweaters, dresses, smocks, pants, jeans, shorts, and other similar clothing and does not include lingerie or see-through fabric.

(d) [~~(e)~~] Licensees shall notify the department in writing of any name change within thirty days of the change.

(e) [~~(f)~~] Licensees shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

(f) [~~(g)~~] Barbers or manicurists who lease space on the premises of a barbershop or manicurist specialty shop to engage in the practice of barbering as an independent contractor must obtain a booth rental permit.

§82.71. Responsibilities of Barbershops and Manicurist Specialty Shops[~~Shop Owner and/or Shop Manager~~].

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

(g) A shop shall provide for the use of individuals who work in the shop at least one sink, wash basin, or hand sanitizer for every three chairs or stations.

(h) Only a permitted barber school, barbershop, or manicurist specialty shop or a licensed barber may advertise in the yellow pages of the telephone directory under "Barber."

(i) A shop is [~~Permit holders are~~] responsible for compliance with the health and safety standards of this chapter.

(j) [~~(h)~~] Alterations to the shop's floor plan must be in compliance with the requirements of the Act and this chapter.

(k) A barber establishment shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

(l) [~~(i)~~] Shops may establish rules of operation and conduct, which may include rules relating to clothing, that do not conflict with this chapter.

(m) [~~(j)~~] Shops [~~Permit holders~~] shall notify the department in writing of any name change of the shop within thirty days of the change.

(n) [~~(k)~~] Shops [~~Permit holders~~] shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

§82.72. Responsibilities of Barber Schools.

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

(h) [~~Optional equipment for the kit will be as follows:~~]

[~~(1) one razor strop;~~]

[~~(2) one razor hone; and~~]

[~~(3) one straight razor.~~]

[~~(i)~~] No student may take instruction or accrue hours for practical work unless he or she is equipped with the tools required above.

(i) [~~(j)~~] Each barber school shall have:

(1) for each student in attendance on the practical floor, enrolled in a manicurist course outlined in §82.120, one complete manicure table, one complete set of manicuring implements for plain and sculptured nails, and one textbook with complete instructions;

(2) an adequate supply of permanent wave rods;

(3) a minimum of two canvas-type wig blocks;

(4) two mannequins, one long-haired and one short-haired;

(5) a minimum of one wig, one hairpiece, and one hairwoven piece;

(6) clock;

(7) bulletin board;

(8) fire extinguisher with current inspection report;

(9) teacher's desk in classroom; and

(10) if providing manicure or pedicure nail services, a department-approved sterilizer.

(j) [~~(k)~~] Each classroom consultant to theory instruction in a barber school shall have a valid Texas barber teacher's certificate, an academic degree or specialized training or expertise in the subject being taught if the subject pertains to material relating to barbering.

(k) [~~(l)~~] A student teacher may instruct theory only if assisted by a person holding a teaching certificate.

(l) [~~(m)~~] Whenever an approved barber school is without the services of at least one teacher who has a valid Texas barber teacher's certificate for all or any portion of three consecutive business days, no instruction may be provided, and no student shall accrue hours for either practical work or theory for the duration of such absence.

(m) [~~(n)~~] A barber school shall submit each application for student permit which shall include the following items:[~~;~~]

(1) the [~~The~~] original of the application for student permit form; and[~~.~~]

(2) proof [~~Proof~~] of a seventh-grade education or its equivalency. This shall be in the form of a transcript or [~~photostatic~~] copy of the diploma, equivalency certificate, or record.

[~~(3) Two recent, identical, permanent-type photographs, size two-inch by two-inch, with applicant's signature on front. No Polaroid photographs will be accepted.~~]

(n) [~~(o)~~] Application for a student permit must be sent to the department in complete form within ten days of actual date of enrollment. After the department receives the completed student permit application, the department will issue a student permit which gives the student the right to do barber service only in the school. The school shall affix to the student permit a current photograph furnished by the student. No student permit is valid unless this photograph is attached thereto.

(o) A barber school shall maintain one album displaying the student permits, including affixed picture, of all enrolled students. The permits shall be in alphabetical order. No student may accrue hours for practical work or theory unless the student's permit is displayed in accordance with this subsection.

(p) Each barber school approved by the department shall include in its instruction the curricula [~~curriculum~~] approved by the department.

(q) No business other than the teaching and practicing of barbering can be operated on the premises of a barber school, with the exception of vending machines or retail products directly relating to hair care.

(r) Only a permitted barber school , barbershop, or manicurist specialty shop or a licensed barber may advertise in the yellow pages of the telephone directory under "Barber."

(s) Schools may establish rules of operation and conduct, which may include rules relating to student clothing, that do not conflict with this chapter.

(t) A student enrolled in a barber school must wear a clean uniform or smock during school hours.

(u) Barber schools are responsible for compliance with the health and safety standards of this chapter.

(v) Alterations to the school's floor plan must be in compliance with the requirements of the Act and this chapter.

(w) Barber schools [~~Permit holders~~] shall notify the department in writing of any name change of the school within thirty days of the change.

(x) Barber schools[~~Permit holders~~] shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

(y) Barber schools shall submit an electronic record of each student's accrued hours, in a format prescribed by the department, no less frequently than one time per 15 days. The initial submission of student hours shall include all student hours accrued at the school. Delayed data submission(s) are permitted only upon department approval, and the department shall determine the period of time for which a school may delay the electronic submission of data on a case by case basis. Upon department approval, a school may submit data required under this subsection in an alternate manner and format as determined by the department, if the school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

(z) A school shall maintain and have available for department and/or student inspection the monthly progress report required by Texas Occupations Code, §1601.561(a), documenting the daily attendance record of each student and number of credit hours earned. The school shall maintain the monthly progress report throughout the period of the student's enrollment and for 48 months after the student completes the curriculum, withdraws, or is terminated.

(aa) A barber establishment shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

§82.73. Responsibilities of Students.

(a) A student shall not engage in any act of dishonesty or misrepresentation relating to a student's hours accrued under this chapter. [~~After the department receives the completed student permit application the department will issue a student permit which gives the student the right to do barber service only in the school. Affixed to the student permit will be a current photograph furnished by the student to the school in accordance with §82.72. No student permit is valid unless this photograph is attached thereto.~~]

(b) [~~The student is responsible for ensuring that a student permit is on display at all times during the student's enrollment at or near the student's work station. No student may accrue hours for practical work or theory unless the permit is displayed in accordance with this subsection.~~]

[~~(c) When a student withdraws or otherwise interrupts his or her training in a barber school, for more than 60 days, after last date of attendance, the school shall send the student permit to the department within seven days after such withdraw, or interruption. The manager or owner of the barber school shall write on the permit the last day of the student's attendance and the number of credit hours accrued by the student and shall sign the student permit.~~]

[~~(d) If a student returns to the same barber school after interruption the school shall notify the department in writing and a student permit shall be reissued.~~]

[~~(e) When a barber school accepts a transfer of a student from another school the accepting school, shall on behalf of the student, submit to the department in writing the student's enrollment application and a request that the department issue a new student permit for the transferring student.~~]

[~~(1) Upon receipt of the accepting schools notification of transfer the department shall notify the school at which the student was formerly enrolled of such transfer.~~]

[~~(2) Upon receipt of the department's transfer notification the manager or owner of the barber school shall, within seven days of receipt of the department's transfer notification, send to the department the student permit with the following information written on the permit:~~]

[~~(A) the last day of the student's attendance;~~]

[~~(B) the number of credit hours accrued by the student; and~~]

[~~(C) the manager's or owner's signature.~~]

[~~(f)~~] Students are responsible for compliance with the health and safety standards of this chapter.

(c) [~~(g)~~] Students shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

§82.74. Responsibilities--Withdrawal, Reentry, or Transfer of Student.

(a) Withdrawal. Except for a documented leave of absence, schools shall electronically submit a student's withdrawal or termination to the department within 15 calendar days after the withdrawal or termination. Except for a documented leave of absence, a school shall terminate a student who does not attend a barber curriculum for 60 days.

(b) Reentry. If a student returns to the same barber school after interruption, the school shall notify the department in writing, and a student permit shall be reissued.

(c) Transfer of student hours between Texas schools. When a barber school accepts a transfer of a student from another school, the accepting school shall notify the department of the transfer, on a form prescribed by the department, and request that the department issue a new student permit for the transferring student.

(1) Upon receipt of the accepting school's notification of transfer, the department shall notify the school at which the student was formerly enrolled of such transfer.

(2) Upon receipt of the department's transfer notification, the manager or owner of the barber school shall, within seven days of receipt of the department's transfer notification, send to the department the student permit with the following information written on the permit:

(A) the last day of the student's attendance;

(B) the number of credit hours accrued by the student; and

(C) the manager's or owner's signature.

(d) Transfer of student hours from out of state.

(1) A student may transfer to Texas hours of barber training received from a school of another state by providing the following to the department:

(A) an official transcript from the school attended, showing hours credited;

(B) a statement from the licensing authority of the other state showing hours credited; and

(C) proof of at least a seventh grade education.

(2) If the student has not completed 1,500 hours in another state, credit for hours completed will be given when he or she is enrolled in a Texas barber school and when a student permit is issued.

§82.80. Fees.

(a) (No change.)

(b) Renewal Fees:

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

(5) Student Permit--No charge [~~$35 (includes $10 law and rules book fee)~~]

(6) - (10) (No change.)

(c) - (i) (No change.)

§82.100. Health and Safety Definitions.

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

(1) Chlorine bleach solutions--A chemical used to destroy bacteria and to disinfect implements and [~~hard,~~] non-porous surfaces; solution should be mixed fresh at least once per day. As used in this chapter, chlorine bleach solutions fall into three categories based on concentration and exposure time:

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

(2) (No change.)

(3) Disinfect or disinfection--The use of chemicals to destroy pathogens on implements and other [~~hard,~~] non-porous surfaces to render an item safe for handling, use, and disposal.

(4) Disinfectant--In this chapter, one of the following department-approved chemicals:

(A) (No change.)

(B) a chlorine bleach solution used in accordance with this chapter [~~consisting of 3/4 cup of 5.25% per gallon of water~~]; or

(C) (No change.)

(5) EPA-registered bactericidal, fungicidal, and virucidal disinfectant- When used according to manufacturer's instructions, a chemical that is a low-level disinfectant used to destroy bacteria and to disinfect implements and [~~hard,~~] non-porous surfaces.

(6) - (9) (No change.)

§82.101. Health and Safety Standards--Department-Approved Disinfectants.

(a) (No change.)

(b) Chlorine bleach solutions shall be used as follows:

(1) (No change.)

(2) Chlorine bleach solutions shall be mixed daily [~~at the following minimum standard: one-third (1/3) cup of 5.25% bleach per gallon of water~~].

(3) - (6) (No change.)

(c) (No change.)

§82.102. Health and Safety Standards--General Requirements.

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

(c) Multi-use equipment, implements, tools or materials not addressed in this chapter shall be cleaned and disinfected before use on each client. Except as otherwise provided in this chapter, chairs [~~Chairs~~] and dryers do not need to be disinfected prior to use for each client.

(d) - (k) (No change.)

(l) Clean towels shall be used on each client.Towels must be washed in hot water and chlorine bleach.

(m) - (o) (No change.)

§82.104. Health and Safety Standards--Facial Services.

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

(c) Facial chairs and beds, including headrest for each, shall be cleaned and disinfected prior to providing service to each client. The chair or bed shall be made of or covered in a non-porous material that can be disinfected.

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

§82.106. Health and Safety Standards--Manicure and Pedicure Services.

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

(d) After each client, the following implements shall be cleaned, [~~and~~] disinfected, and sterilized in accordance with the rule: metal pusher and files, cuticle nipper and scissors, tweezers, [~~nail brushes,~~] finger and toe nail clippers and electric drill [~~file~~] bits.

(e) - (g) (No change.)

§82.107. Health and Safety Standards--Electric Drill Bits.

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

(c) Immediately after cleaning all visible debris, diamond, carbide, natural and metal bits shall be disinfected by complete immersion in an appropriate disinfectant between clients, then sterilized in accordance with this chapter.

(d) (No change.)

§82.108. Health and Safety Standards--Footspas.

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

(g) Footspa chairs shall be cleaned and disinfected prior to providing service to each client. The chair shall be made of or covered in a non-porous material that can be disinfected.

§82.114. Health and Safety Standards--Establishments.

(a) (No change.)

(b) All floors in areas where services under the Act are performed, including restrooms and areas where chemicals are mixed or where water may splash, must be of a material which is not porous or absorbent and is easily washable, except that anti-slip applications or plastic floor coverings may be used for safety reasons. Carpet is permitted in all other areas [~~the reception area~~].

(c) - (i) (No change.)

§82.120. Technical Requirements--Curricula.

(a) [~~Full-time student teacher. A person enrolled in the six-month postgraduate course as a student teacher in an approved barber school shall complete a total of 26 consecutive weeks of training in such barber school. The full-time course shall consist of not less than:~~]

[~~(1) seven hours, 45 minutes per day for a five-day week; or~~]

[~~(2) six hours, 30 minutes per day for a six-day week.~~]

[~~(b) Part-time student teacher. A part-time student teacher at three-fourths time shall be required to attend school either:~~]

[~~(1) six hours per day for a five-day week for 33 weeks, plus an additional two days; or~~]

[~~(2) five hours per day for a six-day week for 33 weeks, plus an additional two days.~~]

[~~(c) Part-time student teacher requirements. On a part-time basis, a student teacher shall complete the course of 1,000 hours in not more than 18 months or shall surrender the student certificate, unless the student produces sufficient evidence of cause to the department in the form of an affidavit.~~]

[~~(d)~~] Requirement for enrollment. No person may enroll in a teacher's course in an approved barber school before receiving a certificate of registration as a Class A barber.

(b) [~~(e)~~] The curriculum [~~to prepare a student for the examination~~] for the teacher's certificate consists [~~will consist~~] of 1,000 hours, to be completed in a course of not less than 26 weeks, as follows [~~to include~~]:
Figure: 16 TAC §82.120(b)
[~~Figure: 16 TAC §82.120(e)~~]

(c) [~~(f)~~] The curriculum [~~to prepare a student for the examination~~] for the class A barber certificate consists [~~will consist~~] of 1,500 hours, to be completed in a course of not less than nine months, as follows [~~to include the following~~]:
Figure: 16 TAC §82.120(c)
[~~Figure: 16 TAC §82.120(f)~~]

(d) [~~(g)~~] The curriculum [~~to prepare a student for the examination~~] for the manicurist license consists [~~will consist~~] of 600 hours, to be completed in a course of not less than 16 weeks, as follows [~~to include~~]:
Figure: 16 TAC §82.120(d)
[~~Figure: 16 TAC §82.120(g)~~]

(e) [~~(h)~~] The curriculum [~~to prepare a student for the examination~~] for the barber technician license [~~will~~] consists of 300 hours, to be completed in a course of not less than eight weeks, as follows [~~to include~~]:
Figure: 16 TAC §82.120(e)
[~~Figure: 16 TAC §82.120(h)~~]

(f) [~~(i)~~] The curriculum for a barber refresher course consists[~~will consist~~] of 300 hours as follows [~~to include~~]:
Figure: 16 TAC §82.120(f)
[~~Figure: 16 TAC §82.120(i)~~]

(g) The changes to this section, as adopted by the commission on June 5, 2006, take effect September 1, 2006.

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 April 3, 2006.

TRD-200601972
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 463-6208

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16 TAC §82.32

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

The repealed rules are proposed under Texas Occupations Code, Chapters 51, 1601 and 1603 which authorizes the Department to adopt rules as necessary to implement these chapters. In particular, the rules implement provisions of Senate Bill 411, 79th Legislature, Regular Session.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51, 1601 and 1603. No other statutes, articles, or codes are affected by the proposal.

§82.32. Transfer of Student Hours from Out of State.

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 April 4, 2006.

TRD-200601993
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 463-6208

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER A. ADMINISTRATION

16 TAC §402.102

The Texas Lottery Commission proposes amendments to 16 TAC §402.102, relating to Bingo Advisory Committee. The purpose of the proposed amendments is to extend the duration of the existence of the Bingo Advisory Committee.

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

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

Written comments on the proposed amendments may be submitted to Sandra Joseph, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, by facsimile, or via the agency's website online public comment form. The Commission will hold a public hearing on this proposal at 11:00 a.m. on April 24, 2006, at 611 E. 6th Street, Austin, Texas. Comments must be received within 30 days after publication of the proposed amendments in the *Texas Register* in order to be considered.

The amendments are proposed under Occupations Code, §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The amendments implement Occupations Code, Chapter 2001.

§402.102. Bingo Advisory Committee.

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

(j) Duration. The BAC will automatically be abolished and cease to exist on August 31, 2007 [~~2006~~]. The BAC shall only remain in existence beyond August 31, 2007 [~~2006~~], if the Commission affirmatively votes to continue the Bingo Advisory Committee in existence.

(k) - (l) (No change.)

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

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601893
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 344-5113

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TITLE 22. EXAMINING BOARDS

PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER C. COMPLIANCE AND ENFORCEMENT

22 TAC §851.152

The Texas Board of Professional Geoscientists (TBPG) proposes an amendment to §851.152, concerning firm compliance. The section establishes compliance guidelines for firms registered in this state. The proposed amendment adds language to §851.152 that provides further details as to how a firm will comply with the firm registration requirements. This section is necessary as a means for creating parameters for enforcement of registered firms.

Michael Hess, Executive Director of the TBPG, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Hess has also determined that for each year of the first five years this section is in effect the public benefit will be having only qualified and compliant firms performing geoscience work in this state. There will not be an effect on small businesses. There may be an economic cost to persons who are required to comply with the proposed section if they violate any provisions of the section.

Comments on the proposal may be submitted in writing to Ariel Juarez, Program Specialist, P.O. Box 13225, Austin, TX 78711, (512) 936-4402. Comments may also be submitted electronically to ajuarez@tbpg.state.tx.us or faxed to (512) 936-4409. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the TBPG not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code, §1002.151 and §1002.351 which allows the Board to adopt rules relating to the public practice of geoscience by a firm.

The proposed amendment implements the Texas Occupations Code, §1002.151 and §1002.351.

§851.152. Firm Compliance.

(a) A firm, partnership, association, corporation, sole proprietorship or other business entity may engage in the public practice of geoscience only if it complies with §1002.351 [~~§8.01~~] of the Texas Geoscience Practice Act (Act). This section does not apply to a licensed professional engineer or engineering firm that performs service or work that is both engineering and geoscience. [~~The geoscientist shall provide to the board evidence of such employment upon its request. This section does not prohibit a licensed professional geoscientist from performing consulting geoscience services on a part-time basis as an individual. A geoscience firm shall provide that at least one full-time geoscientist employee directly supervise all geoscience work performed in branch, remote or project offices.~~]

(b) The geoscientist performing or supervising the geoscientific work for such geoscience firm shall provide to the Board evidence of such employment upon its request. This section does not prohibit a licensed professional geoscientist from performing consulting geoscience services on a part-time basis as an individual. A geoscience firm shall provide that at least one full-time geoscientist employee directly supervise all geoscience work performed in branch, remote, or project offices. If such a branch, remote or project office is normally staffed full-time while performing geoscience work or is represented by the firm as a permanent full-time office, then at least one full-time geoscientist must be physically present in each such office.

(c) A business entity that offers or is engaged in the practice of geoscience in Texas and is found to not be registered with the Board shall register with the Board pursuant to the requirements of §851.30 of this chapter within 30 days of written notice from the Board.

(d) A business entity that offers or is engaged in the practice of geoscience in Texas and that fails to comply with subsection (c) of this section or that has previously been registered with the Board and whose registration has expired shall be considered to be in violation of Board rules and will be subject to administrative penalties as set forth in §§1002.451 - 1002.457 of the Act.

(e) The Board may revoke a certificate of registration that was obtained in violation of the Act and/or Board rules including, but not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated professional geoscientist for the firm.

(f) a business entity that is not registered with the Board may not represent to the public by way of letters, signs, or symbols as a part of any sign, directory, listing, contract, document, pamphlet, stationery, advertisement, signature, or business name that it is engaged in the practice of geoscience by using the terms:

(1) "geoscientist,"

(2) "geoscience,"

(3) "geoscience services,"

(4) "geoscience company,"

(5) "geoscience, inc.,"

(6) "professional geoscientists,"

(7) "licensed geoscientists,"

(8) "registered geoscientists,"

(9) "licensed professional geoscientist,"

(10) "registered professional geoscientist," or

(11) any abbreviation or variation of those terms listed in paragraphs (1) - (10) of this subsection, or directly or indirectly use or cause to be used any of those terms in combination with other words.

(g) each registered firm shall notify the Board in writing no later than 30 days after a change in the business entity's:

(1) physical or mailing address, electronic mail address, telephone or facsimile number or other contact information;

(2) officers or directors if they are the sole P.G.s of the firm;

(3) employment status of the professional geoscientists of the firm;

(4) operation including dissolution of the firm or that the firm no longer offers to provide or is not providing geoscientific services to the public in Texas; or

(5) operation including addition or dissolution of branch and/or subsidiary offices.

(h) notice as provided in subsection (g) of this section shall include, as applicable, the:

(1) full legal trade or business name entity,

(2) the firm registration number,

(3) telephone number of the business office,

(4) name and license number of the license holder employed by or leaving the entity,

(5) description of the change, and

(6) effective date of this 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 March 31, 2006.

TRD-200601967
Frank Knapp
Assistant Attorney General
Texas Board of Professional Geoscientists
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 936-4402

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22 TAC §851.156

The Texas Board of Professional Geoscientists (TBPG) proposes amendments to §851.156, regarding geoscientist's seals. This section establishes the requirements for the creation and appearance of the seal and it's use. The proposed amendments adds or replaces language to §851.156(b), (f) and (j) to clarify references to the TBPG statute, outline requirements for use of an electronic seal and signature, and clarify use of the seal on submitted reports. The need for these amendments is based on certain parts of the rule referencing an incorrect section in the statute and feedback from licensees regarding use of electronic seals and questions relating to what documents need to be sealed in a report.

Michael Hess, Executive Director of the TBPG, has determined that for the first five-year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Hess has also determined that for each year of the first five years the section is in effect the public benefit anticipated will be increased responsibility on the geoscientist to practice in a safe and proper manner. There will not be an effect on small businesses and there is no anticipated cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted in writing to Ariel Juarez, Program Specialist, P.O. Box 13225, Austin, TX 78711, (512) 936-4402. Comments may also be submitted electronically to ajuarez@tbpg.state.tx.us or faxed to (512) 936-4409. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the TBPG not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code, §1002.263 which authorizes the Board to adopt rules outlining the requirements for use of the Professional Geoscientist seal.

The proposed amendment implements the Texas Occupations Code, §1002.263.

§851.156. Geoscientist's Seals.

(a) (No change.)

(b) The geoscientist shall utilize the designation "P.G" or the titles set forth in the Texas Geoscience Practice Act (Act), §1002.251 [~~4.05.~~] Physical seals of two different sizes will be acceptable: a pocket seal (the size commercially designated as 1-5/8-inch seal) or desk seal (commercially designated as a two-inch seal) to be of the design shown in this subsection. Computer-applied seals may be of a reduced size provided that the geoscientist's name and number are clearly legible. All seals obtained and used by license holders must contain any given name or initial combination except for nicknames, provided the surname currently listed with the board appears on the seal and in the usual written signature.

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

(f) All seals obtained and used by license holders shall be capable of leaving a permanent ink or impression representation on the geoscience work, or shall be capable of placing a computer-generated representation in a computer file containing the geoscience work. [~~If not accompanied by an original signature and date, computer-generated seals shall be accompanied by the following text or similar wording: "The seal appearing on this document was authorized by (Example: Leslie H. Doe, P.G. 0112) on (date)."~~]

(1) Electronically conveyed geoscience work that would require a seal as per subsection (j) of this section must contain an electronic seal and electronic signature if hard copies with the licensee's ink or embossed seal and original signature will not be submitted. Such seals should conform to the design requirements set forth in subsection (b) of this section.

(2) Geoscience work transmitted in an electronic format that contains a computer generated seal shall be accompanied by the following text or similar wording: "The seal appearing on this document was authorized by (Example: Leslie H. Doe, P.G. 0112) on (date).", unless accompanied by an electronic signature as described in this section. A license holder may use a computer-generated representation of his or her seal on electronically conveyed work; however, the final hard copy documents of such geoscience work must contain an original signature of the license holder(s) and date or the documents must be accompanied by an electronic signature as described in this section.

(3) A scanned image of an original signature shall not be used in lieu of an original signature or electronic signature. An electronic signature is a digital authentication process attached to or logically associated with an electronic document and shall carry the same weight, authority, and effects as an original signature. The electronic signature, which can be generated by using either public key infrastructure or signature dynamics technology, must be as follows:

(A) unique to the person using it.

(B) capable of verification.

(C) under the sole control of the person using it.

(D) linked to a document in such a manner that the electronic signature is invalidated if any data in the document are changed.

(g) - (i) (No change.)

(j) The geoscientist shall sign, seal and date the original title sheet of bound geoscience reports, specifications, details, calculations or estimates, and each original sheet of plans or drawings regardless of size or binding if the plans or drawings are intended to be or are removed from the report. All other geoscience work, including but not limited to research reports, opinions, recommendations, evaluations, addenda, documents produced for litigation, and geoscience software shall bear the geoscientist's printed name, date, signature and the designation "P.G." or other terms allowed under §1002.251 of the Act [~~the Act, §1.3~~]. A seal must [~~may~~] be added on such work if required by the entity receiving the work; otherwise it may be added [~~or~~] at the geoscientist's discretion. Electronic correspondence of this type shall include an electronic signature as described in subsection (f) of this section or be followed by a hard copy containing the geoscientist's printed name, date, signature and the designation "P.G." or other terms allowed under §1002.251 of the Act [~~the Act, §4.05~~].

(k) - (n) (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 April 4, 2006.

TRD-200601991
Frank Knapp
Assistant Attorney General
Texas Board of Professional Geoscientists
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 936-4402

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 91. CANCER

SUBCHAPTER A. CANCER REGISTRY

25 TAC §§91.1 - 91.12

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§91.1 - 91.12, concerning the reporting of cancer cases for the recognition, prevention, cure or control of those diseases, and to facilitate participation in the national program of cancer registries.

BACKGROUND AND PURPOSE

The proposed amendments will bring rules in line with federal requirements for cancer case information to be reported to the central cancer registry which will allow the state to remain eligible for federal grants; update methods of transmitting case information to the state to reflect current technology; and, clarify reporting expectations for large cancer caseload facilities and facilities with highly qualified cancer reporting personnel to improve cancer reporting efficiency and timeliness. Proposed amendments will remove a reference to a repealed state law regarding medical records privacy to avoid conflicts with federal law. The department carefully considered the best way to reconcile the purposes of the statute to collect accurate, precise, current data which will aid in the early recognition, prevention, cure and control of cancer; to meet federal requirements necessary to insure continued funding, while minimizing impact on providers. The department believes these rules best serve these purposes.

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 91.1 - 91.12 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

The reference to the Texas Board of Health was deleted in §91.1. Amendments to §91.2, Definitions, adds a new definition of "branch" and clarifies other definitions. Amendments to §91.3(e), Who Reports, Access to Records, and §91.9(d), Confidentiality and Disclosure, remove the reference to repealed law, Health and Safety Code, Chapter 181, Medical Records Privacy, §181.101. Amendments to §91.4(a)(1)(B) clarifies language to comply with the national program of cancer registries. Additional amendments to §91.4(b), Reportable Information, add casefinding source; managing physician; and follow-up physician and removes capability to submit cancer reports manually. §91.4(b)(1)(B) adds language to report the primary payer at the time of diagnosis to the extent that information is available in the medical record and additional language to §91.4(b)(2)(B) adds that reports shall be fully coded. The amendment to §91.5 revises timeframes for reporting data.

Amendments to §91.6, How to Report, adds the requirements for Internet reporting using acceptable software by large facilities. In §91.6, the amendments also remove the ability of facilities to submit paper reports and the ability to transmit cases via modem. Subsections (a) and (b) of §91.7 are deleted to eliminate the submission of paper forms. Amended language to §91.8(b) clarifies reporting timeframes. Additional language to §91.10(1) states that the department will provide technical assistance to persons who are required to provide data. Section 91.11 revises references to new agency and data needed for years "1998-2002" instead of "1992-1995". Subsection (b)(3) of §91.12 is deleted to reflect organizational changes resulting in centralized registry operations. Amended language to §91.12(b)(5) clarifies who has access to personal medical records.

All of Subchapter A includes updates to names, references and processes to reflect post-consolidation operations.

FISCAL NOTE

Casey Blass, Section Director, Disease Prevention and Intervention 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

Mr. Blass 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 interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Blass 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 contribute significantly to the knowledge of cancer for use in reducing the cancer burden in Texas.

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 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 John Hopkins, Disease Prevention and Intervention Section, Division for Prevention and Preparedness, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/458-7523 or by email to John.Hopkins@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' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments are authorized by Health and Safety Code, Chapter 82, as amended, which requires the department to maintain a central data bank of accurate, precise, and current information to serve as a tool in the early recognition, prevention, cure and control of cancer and to adopt rules considered necessary to implement this chapter; 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 the Health and Safety Code, Chapter 1001.

The proposed amendments affect Health and Safety Code, Chapters 82 and 1000; and Government Code, Chapter 531. Review of the rules implements Government Code, §2001.039.

§91.1. Purpose.

These sections implement the Texas Cancer Incidence Reporting Act, Health and Safety Code, Chapter 82, [~~that authorizes the Texas Board of Health to adopt rules~~] concerning the reporting of cases of cancer for the recognition, prevention, cure or control of those diseases, and to facilitate participation in the national program of cancer registries established by 42 United States Code §§280e to 280e-4. Nothing in these sections shall preempt the authority of facilities or individuals providing diagnostic or treatment services to patients with cancer to maintain their own cancer registries.

§91.2. Definitions.

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

(1) (No change.)

(2) Branch--Cancer Epidemiology and Surveillance Branch of the department.

(3) [~~(2)~~] Cancer--Includes a large group of diseases characterized by uncontrolled growth and spread of abnormal cells; any condition of tumors having the properties of anaplasia, invasion, and metastasis; a cellular tumor the natural course of which is fatal, including intracranial and central nervous system malignant, borderline, and benign tumors [~~of the central~~] nervous [~~system~~] as required by the national program of cancer registries; and malignant neoplasm, other than non-melanoma [~~nonmelanoma~~] skin cancers such as basal and squamous cell carcinomas.

(4) [~~(3)~~] Cancer reporting handbook--The branch's [~~division's~~] manual for cancer reporters that documents reporting procedures and format.

(5) [~~(4)~~] Clinical laboratory--An accredited facility in which tests are performed identifying findings of anatomical changes; specimens are interpreted and pathological diagnoses are made.

(6) [~~(5)~~] Department--[~~Texas~~] Department of State Health Services.

[~~(6) Division--Cancer Registry Division of the department.~~]

(7) - (10) (No change.)

[~~(11) Regional cancer registry--The organization authorized by the department to receive and collect cancer data for a designated area of the state and which maintains the system by which the collected information is reported to the department.~~]

[~~(12) Regional director--The physician who is the chief administrative officer of a public health region and is designated by the department under the Local Public Health Reorganization Act, Health and Safety Code, §121.007.~~]

(11) [~~(13)~~] Report--Information provided to the department that notifies the appropriate authority of the occupancy of a specific cancer in a person, including all information required to be provided to the department.

(12) [~~(14)~~] Research--A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

(13) [~~(15)~~] Statistical data--Aggregate presentation of individual records on cancer cases excluding patient identifying information.

(14) [~~(16)~~] Texas Cancer Registry--The cancer incidence reporting system administered by the Cancer Epidemiology and Surveillance Branch [~~Registry Division~~].

§91.3. Who Reports, Access to Records.

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

(e) Health care facilities, clinical laboratories, and health care practitioners are subject to federal law known as the Health Insurance Portability and Accountability Act of 1996 found at Title 42 United States Code §1320d et seq.; the federal privacy rules adopted in Title 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164; and applicable state medical records privacy laws [~~state law found in the Health and Safety Code, Chapter 181, Medical Records Privacy, §181.101~~]. Because state law requires reporting of cancer data, persons subject to this chapter are permitted to provide the data to the department without patient consent or authorization under 45 C.F.R. §164.512(a) relating to uses and disclosures required by law and §164.512(b)(1) relating to disclosures for public health activities. Both of these exceptions to patient consent or authorization are recognized in the state law [~~in Health and Safety Code, §181.101~~].

§91.4. What to Report.

(a) Reportable conditions.

(1) The cases of cancer to be reported to the branch [~~division~~] are as follows:

(A) all neoplasms with a behavior code of two or three in the most current edition of the International Classification on Diseases for Oncology (ICD-O) of the World Health Organization with the exception of those designated by the branch [~~division~~] as non-reportable in the cancer reporting handbook; and

(B) all benign and borderline intracranial and central nervous system neoplasms [~~of the central nervous system~~] as required by the national program of cancer registries.

(2) Codes and taxa of the most current edition of the International Classification of Diseases, Clinical Modification of the World Health Organization which correspond to the branch's [~~division's~~] reportable list are specified in the cancer reporting handbook.

(b) Reportable information.

(1) The data required to be reported for each cancer case shall include:

(A) (No change.)

(B) social security number, date of birth, gender, race and ethnicity, marital status, [~~and~~] birthplace, and primary payer at time of diagnosis, to the extent such information is available from the medical record;

(C) - (E) (No change.)

(F) text information to support cancer diagnosis, stage and treatment codes, unless another method acceptable to the branch [~~division~~] is used to confirm these codes;

(G) health care facility or practitioner related information including reporting institution number, casefinding source, type of reporting source, medical record number, registry number, tumor record number, class of case, date of first contact, date of last contact, vital status, facility [~~institution~~] referred from, facility [~~institution~~] referred to, managing physician, follow-up physician, date abstracted, abstractor, and electronic record version; and

(H) clinical laboratory related information including laboratory name and address, pathology case number, pathology report date, pathologist, and referring physician name and address.

(2) Each report shall:

(A) be electronically readable [~~legible~~] and contain all data items required in paragraph (1) of this subsection;

(B) be fully coded and in a format prescribed by the branch [~~division~~];

(C) meet all quality assurance standards utilized by the branch [~~division~~];

(D) (No change.)

(E) be submitted to the branch [~~division~~] electronically [~~, or manually if electronic means are unavailable; and the annual cancer caseload of the health care facility, clinical laboratory or health care practitioner is 50 or fewer cases~~]; and

(F) be transmitted [~~transported~~] by secure means at all times to protect the confidentiality of the data.

§91.5. When to Report.

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

(c) Data shall be submitted no less than quarterly by health care practitioners initially diagnosing a patient with cancer and performing the in-house pathological tests for that patient. Otherwise, data shall be submitted within 2 [4] months of the request to a health care practitioner by the department or its authorized representative for a report or subset of a report on a patient diagnosed or treated elsewhere and for whom the same cancer data has not been reported.

(d) Data shall be submitted no less than quarterly [~~bi-annually~~] by clinical laboratories.

§91.6. How to Report.

(a) Facilities with an annual caseload greater than 400 shall submit their reports of cancer via the Internet using TCR or other acceptable software assuring security of case information.

(b) Reports of cancer from facilities with an annual caseload less than 400 shall be submitted to the branch using one of the following methods: [~~A report of cancer can be made to the department by any of the following methods:~~]

[~~(1) submission of an original of a completed Confidential Cancer Reporting Form (TCR No.1) if electronic means are unavailable and the annual cancer caseload of the health care facility, clinical laboratory or health care practitioner is 50 or fewer cases; or~~]

[~~(2) submission electronically of a TCR No. 1 or a subset of data items acceptable to the division using one of the following methods:~~]

(1) [~~(A)~~] three and one half inch disk;

(2) [~~(B)~~] compact disc; or

[~~(C) computer modem transmission; or~~]

(3) [~~(D)~~] the Internet.

§91.7. Where to Report.

Data reports should be submitted to the branch as specified in the cancer reporting handbook.

[~~(a) Forms. All counties shall be assigned by the division to a regional cancer registry. Completed forms shall be submitted to the regional director or his designee at the regional cancer registry designated to receive data from the county where the person with cancer is admitted, diagnosed or treated.~~]

[~~(b) All electronic data reports should be submitted to the division as specified in the cancer reporting handbook.~~]

§91.8. Compliance.

(a) (No change.)

(b) A person will be notified in writing if the person has not reported in compliance with this chapter within 30 days following the end of the required monthly or quarterly reporting timeframe [~~calendar year quarter~~] and will be given an opportunity to take corrective action within 60 days from the date of the notification letter. A second notification letter will be sent 30 days after the date of the original notification letter if no corrective action has been taken.

(c) - (d) (No change.)

§91.9. Confidentiality and Disclosure.

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

(d) The Texas Cancer Registry is subject to state law [~~the Health and Safety Code, Chapter 181, Medical Records Privacy, §181.101~~] that requires compliance with portions of the federal law and regulations cited in §91.3(e) of this title (relating to Who Reports, Access to Records). The department is authorized to use and disclose, for purposes described in the Act, cancer data without patient consent or authorization under 45 C.F.R. §164.512(a) relating to uses and disclosures required by law, §164.512(b)(1) and (2) relating to uses and disclosures for public health activities, and §164.512(i) relating to uses and disclosures for research purposes.

§91.10. Quality Assurance.

The department shall cooperate and consult with persons required to comply with this chapter so that such persons may provide timely, complete and accurate data. The department will provide:

(1) reporting training, technical assistance, on-site case-finding studies, and reabstracting studies;

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

§91.11. Requests for Statistical Cancer Data.

(a) Statistical cancer data previously analyzed and printed are available upon written or oral request to the branch [~~division~~]. All other requests for statistical data shall be in writing and directed to: Cancer Epidemiology and Surveillance Branch [~~Registry Division~~], [~~Texas~~] Department of State Health Services, 1100 West 49th Street, Austin Texas 78756-3199.

(b) To ensure that the proper data are provided, the request shall include, but not be limited to, the following information:

(1) (No change.)

(2) type of data needed and for what years (e.g. lung cancer incidence rates, Brewster County, 1998-2002 [~~1992-1995~~]); and

(3) (No change.)

§91.12. Requests and Release of Personal Cancer Data.

(a) Data requests for research.

(1) Requests for personal cancer data shall be in writing and directed to: [~~Texas~~] Department of State Health Services, Institutional Review Board (IRB), 1100 West 49th Street, Austin, Texas 78756-3199.

(2) (No change.)

(3) The branch [~~division~~] may release personal cancer data to state, federal, local, and other public agencies and organizations if approved by the IRB.

(4) The branch [~~division~~] may release personal cancer data to private agencies, organizations, and associations if approved by the IRB.

(5) The branch [~~division~~] may release personal cancer data to any other individual or entities for reasons deemed necessary by the department to carry out the intent of the Act if approved by the IRB.

(b) Data requests for non-research purposes.

(1) The branch [~~division~~] may provide reports containing personal data back to the respective reporting entity from records previously submitted to the branch [~~division~~] from each respective reporting entity for the purposes of case management and administrative studies. These reports will not be released to any other entity.

(2) The branch [~~division~~] may release personal data to other areas [~~bureaus~~] of the department, provided that the disclosure is required or authorized by law. All communications of this nature shall be clearly labeled "Confidential" and will follow established departmental internal protocols and procedures.

[~~(3) The division may release personal data to the department's Cancer Registry Program personnel headquartered in public health regions or public health departments to facilitate the collection, editing, and analysis of cancer registry data for the respective geographic area. All communications of this nature shall be clearly labeled "Confidential" and will follow established departmental internal protocols and procedures.~~]

(3) [~~(4)~~] The branch [~~division~~] may release personal cancer data to state, federal, local, and other public agencies and organizations in accordance with subsection (a) of this section.

(4) [~~(5)~~] The branch [~~division~~] may release personal cancer data to any other individual or entities for reasons deemed necessary [~~by the board~~] to carry out the intent of the Act and in accordance with subsection (a) of this section.

(5) [~~(6)~~] An individual [~~A person~~] who submits a valid authorization for release of an individual cancer record shall have access to review or obtain copies of the information described in the authorization 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 March 31, 2006.

TRD-200601945
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 458-7111 x6972

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CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER K. RESPIRATORY SYNCYTIAL VIRUS

25 TAC §§97.251 - 97.257

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§97.251 - 97.257, concerning Respiratory Syncytial Virus (RSV).

BACKGROUND AND PURPOSE

The new rules comply with Health and Safety Code, Chapter 96 "Respiratory Syncytial Virus" (House Bill 1677, 79th Legislature, Regular Session, 2005), which requires the department to establish a sentinel surveillance program for RSV that will identify RSV infection in children and maintain data that can be used to investigate incidence, prevalence, and trends of RSV. The department is required by the statute to specify a system for selecting the demographic areas in which the department will collect information, and prescribe the manner in which data is reported to the department.

The department carefully considered the best way to reconcile the purposes of the statute to select accurate, representative sources of data; to investigate the incidence prevalence and trends of RSV; while minimizing impact on providers. The department believes these rules best serve these purposes.

SECTION-BY-SECTION SUMMARY

New §97.251 provides definitions for the new subchapter; new §97.252 outlines confidentiality requirements; new §97.253 provides information regarding the limitation of liability for health professionals, health facilities, administrators, officers, or employees of a health facility that provides information as outlined in the new subchapter; new §97.254 requires the cooperation of governmental entities to assist the department in carrying out the new subchapter; new §97.255 establishes the sentinel surveillance program at the department; new §97.256 outlines the process the department will use for RSV data collection; and new §97.257 states that the information collected by the department regarding RSV infection may be placed in a central database to facilitate information sharing and provider education.

FISCAL NOTE

Jon Huss, Section Director, Community Preparedness 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 the state as a result of enforcing and administering the sections as proposed. There is no anticipated fiscal implication for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Huss 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 interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Huss 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 provide additional information to health care providers regarding the occurrence of RSV infection in Texas.

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 the 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 rules 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 Susan C. Penfield, M.D., Manager, Infectious Disease Control Unit, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189, (512) 458-7455, or susan.penfield@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' authority to adopt.

STATUTORY AUTHORITY

The new sections are authorized by the Health and Safety Code, §96.005, which requires the Executive Commissioner of the Health and Human Services Commission to establish in the department a sentinel surveillance program for RSV infection; 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.

The new sections affect the Health and Safety Code, Chapters 96 and 1001; and Government Code, Chapter 531.

§97.251. Definitions.

The following words and terms when used in this subchapter and Health and Safety Code, Chapter 96 ("Respiratory Syncytial Virus") shall have the following meanings unless the context clearly indicates otherwise.

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

(2) Executive Commissioner--The Executive Commissioner of the Health and Human Services Commission.

(3) Health facility includes:

(A) a general or special hospital licensed by the department under Health and Safety Code, Chapter 241;

(B) a physician-owned or physician-operated clinic;

(C) a publicly or privately funded medical school;

(D) a state hospital or state school maintained and managed by the Department of State Health Services or the Department of Aging and Disability Services;

(E) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Health and Safety Code, Chapter 121; and

(F) another facility specified by a rule adopted by the executive commissioner.

(4) Local health unit--Defined in Health and Safety Code, §121.004.

(5) RSV--Respiratory Syncytial Virus.

§97.252. Confidentiality.

(a) Except as specifically authorized by this subchapter and Health and Safety Code, Chapter 96 ("Respiratory Syncytial Virus"), reports, records, and information furnished to a department employee or to an authorized agent of the department that relate to cases or suspected cases of a health condition are confidential and may be used only for the purposes of this subchapter.

(b) Reports, records, and information relating to cases or suspected cases of health conditions are not public information under Government Code, Chapter 552, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) The department may release medical, epidemiological, or toxicological information:

(1) for statistical purposes, if released in a manner that prevents the identification of any person;

(2) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this subchapter and Health and Safety Code, Chapter 96 ("Respiratory Syncytial Virus") relating to the identification, monitoring, and referral of children with RSV; or

(3) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service.

§97.253. Limitation of Liability.

A health professional, a health facility, or an administrator, officer, or employee of a health facility subject to this subchapter and Health and Safety Code, Chapter 96 ("Respiratory Syncytial Virus") is not civilly or criminally liable for divulging information required to be released under this subchapter and Health and Safety Code, Chapter 96 ("Respiratory Syncytial Virus"), except in a case of gross negligence or willful misconduct.

§97.254. Cooperation of Governmental Entities.

Another state board, commission, agency, or governmental entity capable of assisting the department in carrying out the intent of this subchapter and Health and Safety Code, Chapter 96 ("Respiratory Syncytial Virus") shall cooperate with the department and furnish expertise, services, and facilities to the sentinel surveillance program.

§97.255. Sentinel Surveillance Program.

(a) The department shall establish and maintain a sentinel surveillance program for RSV infection in children. The program will:

(1) identify by sentinel surveillance RSV infection in children; and

(2) maintain a central database of laboratory-confirmed cases of RSV that can be used to investigate the incidence, prevalence, and trends of RSV.

(b) The department will recruit at least one health care facility or provider associated with a health care facility in each Health Service Region of the State to report RSV data.

(c) The department will endeavor to recruit a provider from each county with more than 500,000 residents, according to the 2000 census.

(d) The department may use existing data collected by health facilities.

§97.256. Data Collection.

(a) To ensure an accurate source of data, the department may require a health facility or health professional to make available for review by the department or by an authorized agent medical records or other information that is in the facility's or professional's custody or control and that relates to an occurrence of RSV.

(b) The department shall request that data on RSV be reported weekly to the department through an existing surveillance program as specified by the department.

(c) The data reported should include at minimum the total number of laboratory tests performed for RSV infection and the total number of positive tests for RSV infection collected during the week for which it is reported.

§97.257. Database.

(a) Information collected and analyzed by the department or an authorized agent under this chapter may be placed in a central database to facilitate information sharing and provider education. The department may consult with pediatric infectious disease experts in these analyses.

(b) The department may use the data to:

(1) design and evaluate measures to prevent the occurrence of RSV and other health conditions; and

(2) provide information and education to providers on the incidence of RSV infection.

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 March 31, 2006.

TRD-200601932

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 14, 2006

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

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CHAPTER 157. EMERGENCY MEDICAL CARE

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §157.14 and new §157.14, concerning First Responder Organizations; the repeal of §157.33 and new §157.33, concerning Certification; the repeal of §157.34 and new §157.34, concerning Recertification; and the repeal of §157.40 and new §157.40, concerning Paramedic Licensure.

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 157.14, 157.33, 157.34 and 157.40 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

Revisions of these sections were necessary to comply with the mandatory four-year rule review. Additionally, the repealed and new sections reflect consensus achieved by the stakeholder group (Governor's EMS and Trauma Advisory Council) and department staff. These sections also reflect organizational changes in the department mandated by House Bill 2292 of the 78th Texas Legislature, Regular Session, 2003.

SECTION-BY-SECTION SUMMARY

The decision to repeal §§157.14, 157.33, 157.34 and 157.40 and propose new §§157.14, 157.33, 157.34 and 157.40 was due to extensive formatting changes and changes within the rules to make these sections more uniform.

New §157.14 strengthens regulation of First Responder Organizations using certified or licensed Emergency Medical Services (EMS) personnel to provide prehospital emergency medical care. Under new §157.14, the organizations will be required to be licensed, have medical direction, and work cooperatively with the EMS Providers who transport the patients.

New §157.33 provides clarification to the rules, allows more flexibility to candidates for EMS certification, including those coming from other states or other health care disciplines, and parallels requirements that candidates must meet to be eligible for taking the credentialing exam with the National Testing Service.

New §157.34 provides clarification to the rules, allows more flexibility to candidates completing EMS recertification requirements, and provides an option for candidates with inactive certifications or certifications that have lapsed for more than one year.

New §157.40 provides clarification to the rules, allows more flexibility to candidates for EMS paramedic licensure, parallels requirements that candidates must meet to be eligible for taking the credentialing exam with the National Testing Service, and provides an option for candidates with inactive licensure or a license that has lapsed for more than one year.

FISCAL NOTE

Kathryn C. Perkins, Section Director, Health Care Quality Section, has determined that for each calendar year of the first five years that §157.14 is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section as proposed. The effect on state government will be an increase in revenue to the state of $1200 the first fiscal year, $2400, the second fiscal year, $1200 the third fiscal year, $2400 the fourth fiscal year, and $1200 in the fifth fiscal year due to the increase in numbers of licenses and the two-year license requirement. Implementation of proposed §157.14 will have a fiscal impact on local governments operating First Responder Organizations that would fall under requirements of the new §157.14. The First Responder Organization fee is $60 for a two-year license. Volunteer First Responder Organizations are exempt from fees.

Ms. Perkins 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 §§157.33, 157.34 and 157.40 as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there are minor anticipated economic costs to small businesses or micro-businesses required to comply with §157.14 as proposed. There will be a licensing fee for businesses or organizations required to apply for licensure as First Responder Organizations. The economic cost to organizations required to comply with the fee is $60 every two years. There is no anticipated negative impact on local employment.

Ms. Perkins has also determined that there will be no effect on small businesses or micro-businesses required to comply with §§157.33, 157.34 and 157.40 as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins 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 ensuring the health and safety of the public.

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 environment 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 environment exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals and new rules 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 Kathryn C. Perkins, Section Director, Health Care Quality Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700 or by email to kathy.perkins@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' authority to adopt.

SUBCHAPTER B. EMERGENCY MEDICAL SERVICES PROVIDER LICENSES

25 TAC §157.14

(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 repeal is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; §773.050(e) which authorizes the department to adopt minimum standards of first responder organizations; §773.050(b) and §773.0495 which authorize the department to adopt minimum standards for certified and licensed EMS personnel; 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.

The repeal affects the Health and Safety Code, §773. The review of the section implements Government Code, §2001.039.

§157.14. Requirements for First Responder Organization Registration.

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 March 31, 2006.

TRD-200601951
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 458-7236

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25 TAC §157.14

STATUTORY AUTHORITY

The new section is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; §773.050(e) which authorizes the department to adopt minimum standards of first responder organizations; §773.050(b) and §773.0495 which authorize the department to adopt minimum standards for certified and licensed EMS personnel; 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.

The new section affects the Health and Safety Code, §773. The review of the section implements Government Code, §2001.039.

§157.14. Requirements for a First Responder Organization License.

(a) A First Responder Organization (FRO) is a group or association of certified emergency medical services personnel that works in cooperation with a licensed emergency medical services provider to:

(1) routinely respond to medical emergency situations;

(2) utilize personnel who are emergency medical services (EMS) certified by the Texas Department of State Health Services (department); and

(3) provide on-scene patient care to the ill and injured and does not transport patients.

(b) Individuals or organizations meeting the description in subsection (a) of this section must comply with the requirements outlined in this section including submission of an application for a license.

(c) Application requirements for an FRO affiliated with a licensed EMS Provider.

(1) A Basic Life Support (BLS) or Advanced Life Support (ALS) First Responder Organization affiliated with a Texas licensed EMS Provider must apply for an FRO license by submitting a completed application to the department. A complete application consists of the following:

(A) provider license application form;

(B) personnel list including social security number or EMS personnel identification (ID) number and certification/licensure level;

(C) description and map of the service area;

(D) staffing plan including days of the week and hours of the day the FRO will be available for response;

(E) written affiliation agreement with the primary licensed EMS provider in the service area. The primary licensed EMS provider must provide a letter attesting that the following items have been reviewed and approved by the director and medical director of the EMS provider:

(i) level(s) of certification/licensure of FRO personnel providing care;

(ii) response, dispatch and treatment protocols including an equipment and supply list approved by the medical director of the licensed EMS provider;

(iii) description of how the FRO receives notification of calls;

(iv) patient care reporting procedures;

(v) process for the assessment of care provided by the FRO personnel;

(vi) response code policies for FRO personnel;

(vii) on-scene chain-of-command policies;

(viii) policies regarding FRO personnel canceling en route EMS units;

(ix) policies regarding FRO personnel accompanying patients in EMS providers vehicles including when FRO personnel hold the highest certification or licensure on the scene; and

(x) patient confidentiality.

(F) It is not necessary to submit the individual items in subparagraph (E)(i) - (x) of this subsection with the application, if each is referenced in the affiliation agreement. All items listed in paragraph (1) of this subsection must be immediately available for review by department personnel upon request during unannounced site visits or complaint investigations.

(2) Any FRO which is, or has a contract with, an entity such as a business, corporation or department and whose first responder employees or members are compensated by that entity for providing first responder service shall pay a nonrefundable $60 application fee. If the license is issued for less than 12 months, the nonrefundable fee shall be $30. The FRO personnel described in this paragraph are not exempt from the payment of certification or license application fees.

(3) Applicants who meet all the requirements shall be issued an FRO license. The license may be valid for up to 2 years, but may be issued for less than 2 years for administrative purposes.

(4) Although not required, the FRO license application may be submitted with the license application of the affiliated EMS provider. The FRO is responsible for submitting fees, if applicable.

(5) An affiliation agreement between a licensed EMS provider and a licensed FRO does not automatically imply any legal liability beyond the agreements listed in paragraph (1)(E) of this subsection.

(6) A violation of statute or rule by an FRO will not implicate the affiliated EMS provider unless both organizations are involved in the violation. Likewise, a violation of statute or rule by an affiliated EMS provider does not implicate the FRO unless both organizations are involved in the violation.

(d) Application requirements for an FRO not affiliated with a licensed EMS provider.

(1) A BLS first responder organization not affiliated with a licensed EMS provider may apply for an FRO License by submitting a completed application to the department. A complete application consists of the following:

(A) application form;

(B) personnel list including social security number or personnel ID number and certification/licensure level;

(C) description and map of the service area;

(D) staffing plan including days of the week and hours of the day the FRO will be available for response;

(E) response, dispatch and treatment protocols including an equipment and supply list approved by the FRO medical director;

(F) letter of recognition from the primary licensed 911 EMS Provider or from the highest elected city/county official in the service area and a written explanation why the EMS provider will not enter into an agreement with the FRO;

(G) description of how the FRO receives notification of calls; and

(H) process for the assessment of care provided by the FRO personnel.

(I) The application for a FRO license will be considered incomplete if any items listed in subparagraphs (A) - (H) of this paragraph are not enclosed with the application.

(J) All items listed in subparagraphs (A) - (H) of this paragraph must be immediately available for review by department personnel if requested during unannounced site visits or complaint investigations.

(2) An ALS first responder organization not affiliated with a licensed EMS provider may apply for an FRO License by submitting a completed application to the department. A complete application consists of the following:

(A) application form;

(B) personnel list including social security number or personnel ID number and certification/licensure level; and

(C) description and map of the service area; and

(D) staffing plan including days of the week and hours of the day the FRO will be available for response.

(E) The FRO shall have an agreement with all licensed EMS providers and their medical directors who routinely transport patients treated by the FRO's personnel. Each agreement shall be approved by the person responsible for the FRO, director and medical director of each licensed EMS provider. At a minimum, the agreements shall address:

(i) the level(s) of certification/licensure of FRO personnel providing care;

(ii) the response, dispatch and treatment protocols including an equipment and supply list approved by the FRO medical director and a letter of approval from the medical director(s) of the licensed transporting providers with whom the FRO has agreements;

(iii) a description of how the FRO receives notification of calls;

(iv) patient care reporting procedures;

(v) a process for the assessment of care provided by FRO personnel;

(vi) response code policies for FRO personnel;

(vii) on-scene chain-of-command policies;

(viii) policies regarding FRO personnel canceling en route EMS units;

(ix) policies regarding FRO personnel accompanying patients in provider's vehicles including when FRO personnel hold the highest certification or licensure on the scene; and

(x) patient confidentiality.

(F) The application for a FRO license is incomplete if any items listed in paragraph (2) of this subsection are not enclosed with the application.

(G) All items listed in paragraph (2) of this subsection must be immediately available for review by department personnel if requested during unannounced site visits or complaint investigations.

(3) Any FRO which is, or has a contract with, an entity such as a business, corporation or department and whose first responder employees or members are compensated by that entity for providing first responder services shall pay a nonrefundable $60 application fee. If the license is issued for less than 12 months, the nonrefundable fee shall be $30. The FRO personnel described in this paragraph are not exempt from the payment of certification and license application fees.

(4) Applicants who meet all the requirements for a license shall be issued an FRO license. The license is issued for 2 years. For administrative purposes, it may be issued for less than 2 years.

(e) Responsibilities of the FRO. During the license period the FRO's responsibilities shall include:

(1) assuring ongoing compliance with the terms of all EMS provider agreement(s);

(2) assuring the existence of and adherence to a quality assurance plan which shall, at a minimum, include:

(A) the standard of patient care and the medical director's protocols;

(B) pharmaceutical storage;

(C) readiness inspections;

(D) preventive maintenance of medical equipment and vehicles owned by the FRO;

(E) policies and procedures;

(F) complaint management; and

(G) patient care reporting and documentation.

(3) ensuring that all medical personnel are currently certified or licensed by the department;

(4) assuring that all personnel on the scene of an emergency are prominently identified by, at least, the last name and the first initial of the first name, the certification or license level and the FRO name. An FRO may utilize an alternative identification system in incident specific situations that pose a potential for danger if the individuals are identified by name;

(5) assuring that all vehicles utilized by FRO personnel carry proof of first responder registration or have the name of the FRO prominently displayed and visible from the outside of the vehicle while on the scene of an emergency;

(6) assuring the confidentiality of all patient information in compliance with all federal and state laws;

(7) developing and adhering to an agreement between the primary transport provider and first responder organization concerning the use of patient refusal forms and documentation for incidents when an informed treatment refusal form cannot be obtained;

(8) developing and adhering to an agreement between the primary transport provider and first responder organization concerning the maintenance of FRO records;

(9) assuring that patient care reports are completed accurately for all patients:

(A) the report shall be accurate, complete and clearly written.

(B) the report shall document, at a minimum, the patient's name, condition upon arrival at the scene; the prehospital care provided; the dispatch time; scene arrival time; and the identification of the EMS staff.

(10) assuring that all relevant patient care information is supplied in writing to the licensed EMS provider at the time the patient is transferred to the provider;

(11) assuring that a full written report is provided, upon request, within 1 business day to the transport provider and/or hospital facility where the patient was delivered;

(12) assuring that all requested patient records are made promptly available to the first responder organization's medical director;

(13) assuring that current protocols are available to all certified or licensed personnel;

(14) monitoring and enforcing compliance with all policies;

(15) assuring provisions for the appropriate disposal of medical and/or biohazardous waste materials;

(16) assuring that all documents, reports or information provided to the department are current, accurate and complete;

(17) assuring compliance with all federal and state laws and regulations and all local ordinances, policies and codes at all times;

(18) assuring that the department is notified within 5 business days whenever there is a change:

(A) in the level of service;

(B) in the declared service area;

(C) in the official business mailing address;

(D) in the physical location of the first responder organization;

(E) in the physical location of patient report file storage, to assure that the department has access to these records at all times;

(F) of the administrator;

(G) of e-mail address; or

(H) of EMS providers associated with the FRO.

(19) assuring that the department is notified within 1 business day when a change of the medical director has occurred;

(20) assuring the FRO has written operating policies, procedures and medical protocols and provides all medical personnel a copy initially and whenever such policies, procedures and/or medical protocols are changed. A copy of the written operating policies, procedures and medical protocols shall be made available to the department upon request. At a minimum, policies shall adequately address:

(A) personal protective equipment;

(B) immunizations available to personnel;

(C) infection control procedures;

(D) communicable disease exposure;

(E) credentialing of new response personnel before being assigned to respond to emergencies. The credentialing process shall include, at minimum:

(i) a comprehensive orientation session of the FRO's policies and procedures, safety precautions, and quality management process; and

(ii) an internship period in which all new personnel practice under the supervision of, and are evaluated by, another more experienced person, if operationally feasible.

(F) appropriate documentation of patient care;

(21) assuring that all documents, reports or information provided to the department are current, truthful and correct;

(22) assuring that the department is notified within 1 business day of a collision involving an FRO vehicle responding to a scene or while at the scene of an emergency and resulting in personal injury or death of any person;

(23) maintaining motor vehicle liability insurance as required by the Texas Transportation Code under Subchapter D, §601.071 and §601.072, for all vehicles owned or operated by the FRO;

(24) providing continuous coverage for the service area as defined in the staffing plan; and

(25) responding to requests for assistance from the highest elected official of a political subdivision or from the department during a declared emergency or mass casualty situation.

(f) License renewal.

(1) The department may notify the FRO at least 90 days before the expiration date of the current license at the address shown in the current records of the department. If a notice of expiration is not received, it is the responsibility of the FRO to notify the department and request license renewal application information.

(2) FROs shall submit a completed application and nonrefundable fee, if applicable, and must verify compliance with the requirements of the license.

(g) License denial. A license may be denied for, but not limited to, the following reasons:

(1) failure to meet requirements for an FRO license in accordance with this section;

(2) previous failure to meet the responsibilities of an FRO as described in this section;

(3) falsifying any information, record or document required for an FRO license;

(4) misrepresenting any requirements for an FRO license or renewal of an FRO license;

(5) history of criminal activity while licensed as an FRO;

(6) history of disciplinary action relating to the FRO license; and/or

(7) issuing a check for application for an FRO license which is subsequently returned to the department unpaid.

(h) License revocation criteria. An FRO license may be revoked or suspended for failure to meet the responsibilities of a licensed FRO as described in this section.

(i) For all applications and renewal applications, the department 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.

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 March 31, 2006.

TRD-200601950
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 458-7236

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SUBCHAPTER C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

25 TAC §§157.33, 157.34, 157.40

(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 repeals are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; §773.050(e) which authorizes the department to adopt minimum standards of first responder organizations; §773.050(b) and §773.0495 which authorize the department to adopt minimum standards for certified and licensed EMS personnel; 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.

The repeals affect the Health and Safety Code, §773. The review of the sections implements Government Code, §2001.039.

§157.33. Certification.

§157.34. Recertification.

§157.40. Paramedic Licensure.

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 March 31, 2006.

TRD-200601953
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 458-7236

♦ ♦ ♦

25 TAC §§157.33, 157.34, 157.40

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; §773.050(e) which authorizes the department to adopt minimum standards of first responder organizations; §773.050(b) and §773.0495 which authorize the department to adopt minimum standards for certified and licensed EMS personnel; 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.

The new sections affect the Health and Safety Code, §773. The review of the sections implements Government Code, §2001.039.

§157.33. Certification.

(a) Certification requirements. A candidate for emergency medical services (EMS) certification shall:

(1) be at least 18 years of age;

(2) have a high school diploma or GED certificate:

(A) the high school diploma must be from a school accredited by the Texas Education Agency (TEA) or a corresponding agency from another state. Candidates who received a high school education in another country must have their transcript evaluated by a foreign credentials evaluation service that attests to its equivalency. A home school diploma is acceptable if it is accompanied by a letter of acceptance into a regionally accredited college;

(B) an emergency care attendant (ECA) who provides emergency medical care exclusively as a volunteer for a licensed provider or registered FRO is exempt from paragraph (2) of this subsection.

(3) have successfully completed a Department of State Health Services (department)-approved course; and

(4) submit an application, meeting the requirements in §157.3 of this title (relating to Processing EMS Provider Licenses and Applications for EMS Personnel Certification and Licensing), and the following nonrefundable fees as applicable:

(A) $60 for emergency care attendant (ECA) or emergency medical technician (EMT);

(B) $90 for EMT-intermediate (EMT-I) or EMT-paramedic (EMT-P); and

(C) EMS volunteer--no fee. However, if such an individual receives compensation during the certification period, the exemption ceases and the individual shall pay a prorated fee to the department based on the number of years remaining in the certification period when employment begins. The nonrefundable fee for ECA or EMT certification shall be $15 per each year remaining in the certification. The nonrefundable fee for EMT-I or EMT-P shall be $22.50 per each year remaining in the certification. Any portion of a year will count as a full year; and

(5) provide evidence of current active or inactive National Registry certification at the appropriate level. National Registry First Responder certification is considered the appropriate corresponding certification level for an ECA.

(b) Length of certification. A candidate who meets the requirements of subsection (a) of this section shall be certified for four years beginning on the date of issuance of a certificate and wallet-size certificate. A candidate must verify current certification before staffing an EMS vehicle. Certification may be verified by the applicant's receipt of the official department identification card, by using the department's certification website, or by contacting the department directly.

(c) Scheduling authority for certification examinations.

(1) The department has final authority for scheduling all certification examination sessions.

(2) Examinations shall be administered at regularly scheduled times in various locations across the state.

(3) The candidate shall be responsible for making appropriate arrangements for the examination.

(4) The department is not required to set special examination schedules for a single candidate or for a specific group of candidates.

(d) Time limits for completing requirements.

(1) An initial candidate for certification shall complete all requirements for certification no later than two years after the candidate's course completion date. The application will expire two years from the date the mailed application is postmarked, or the date a faxed, online submission or hand-delivered application is received at the department.

(A) The National Registry certification described in subsection (a)(5) of this section must remain current until the final requirement for state certification is met.

(B) The applicant shall update the application if any changes occur between the time of original submission and the time the final requirement for certification is met.

(2) A candidate who does not complete all requirements for certification within two years of the candidate's initial course completion date must meet the requirements of subsection (a) of this section, including the completion of another initial course to achieve certification.

(e) Non-transferability of certificate. A certificate is not transferable. A duplicate certificate may be issued if requested with a nonrefundable fee of $10.

(f) A candidate may apply for a lower level than the level of National Registry certification held.

(g) Voluntary downgrades.

(1) An individual who holds a current Texas EMS certification or paramedic license may be certified at a lower level voluntarily for the remainder of the certification period by submitting an application for the lower level certification and the applicable nonrefundable fee as required in subsection (a)(4) of this section.

(2) On the date the downgrade is final, the previous higher level of certification/license shall be surrendered. To regain the original higher level of certification, the candidate shall follow late recertification procedures according to §157.34(d) of this title (relating to Recertification), within one year after the surrender date.

(h) Inactive certification. A certified EMT, EMT-I, or EMT-P may make application to the department for inactive certification at any time during the certification period or within one year after the certificate expiration date.

(1) The request for inactive certification shall be accompanied by a nonrefundable fee of $30 in addition to the regular nonrefundable fee in subsection (a)(4)(A) and (B) of this section. If the final requirement is completed during the one-year period after expiration, the application fees listed in §157.34(d) of this title will be required. Volunteers are not exempt from inactive fees.

(2) Period of inactive certification.

(A) The inactive certification period shall begin upon date of issuance of the notice of inactive certification and remain in effect until the end of the original active certification period for those candidates who are currently certified. The candidate's active certification is surrendered upon issuance of the notice of inactive certification.

(B) If the candidate is within the final year of active certification and chooses to renew with inactive certification, the inactive certification begins on the first day after the expiration of the current active certificate and shall remain in effect for four years.

(C) If the candidate applies during and/or completes the final requirement for inactive certification within one year after the expiration of active certification, the inactive certification period shall remain in effect for four years from the date of issuance of the notice of inactive certification.

(3) While on inactive certification, a person shall not practice other than to act as a bystander rendering first aid or cardiopulmonary resuscitation (CPR) or the use of an Automated External Defibrillator in the capacity of a layperson. Practicing in any other capacity for compensation or as a volunteer shall be cause for denial of reentry and decertification.

(4) An individual shall not simultaneously hold inactive and active certification.

(i) Reciprocity.

(1) A person who is currently certified by the National Registry but did not complete a department-approved course may apply for the equal or lower level Texas certification by submitting a reciprocity application and a nonrefundable fee of $120.

(A) Applicants holding National Registry EMT-intermediate certification must submit written verification of proficiency of EMT-intermediate skills from an approved education program.

(B) National Registry first responder certification is not eligible for reciprocity at the ECA level.

(C) A candidate will not be eligible for reciprocity if the National Registry certification expires prior to the completion of all requirements for certification as listed in this section.

(D) A candidate who meets the requirements of this section shall be certified for four years beginning on the date of issuance of a certificate and wallet-size certificate.

(2) A person currently certified by another state may apply for equal or lower level Texas certification by submitting a reciprocity application and a nonrefundable fee of $120.

(A) The candidate must pass the National Registry assessment exam.

(B) Applicants holding EMT-intermediate out-of-state certification must submit written proof of proficiency on all of the EMT-Intermediate skills signed by a Texas certified EMS coordinator or instructor.

(C) Reciprocity is not allowed for the ECA level.

(D) A candidate will not be eligible for reciprocity if the out-of-state certification expires prior to the completion of all requirements for certification as listed in this section.

(E) A candidate who meets the requirements of this section shall be certified for four years beginning on the date of issuance of a certificate and wallet-size certificate.

(3) Personnel receiving department issued certification through reciprocity must recertify prior to the expiration of the certificate by following the requirements in §157.34 of this title.

(j) Equivalency.

(1) Candidates meeting the following criteria may apply for certification only through the equivalency process as described in this subsection:

(A) an individual who completed EMS training outside the United States or its possessions;

(B) an individual who is certified or licensed in another healthcare discipline;

(C) an individual whose department issued EMS certification or license has been expired for more than one year; or

(D) an individual who has held department issued inactive certification for more than four years.

(2) A candidate applying for certification by equivalency shall:

(A) submit a copy of the curriculum and work history completed by the candidate to a regionally accredited post secondary institution approved by the department to sponsor an EMS education program for its review;

(B) obtain a course completion document that verifies that the program is satisfied that all curriculum requirements have been met. Evaluations of curricula conducted by post secondary educational institutions under this subsection shall be consistent with the institution's established policies and procedures for awarding credit by transfer or advanced placement; and

(C) the candidate may then apply for initial certification with the department as described in subsection (a) of this section.

(k) For all applications and renewal applications, the department 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.

§157.34. Recertification.

(a) Recertification requirements.

(1) Not later than the 30th day before the date a person's certificate is scheduled to expire, the Department of State Health Services (department) may send to the person a notice of expiration at the address shown in the current records of the department.

(2) If a certificant has not received a notice of expiration from the department 30 days prior to the expiration, it is the duty of the certificant to notify the department and to request an application for recertification or download an application from the Internet.

(3) To maintain certification status without a lapse, an applicant shall submit a completed application for recertification and shall meet all requirements for renewal of the current certification prior to the expiration date of the current certificate, but no earlier than one year prior to the expiration date.

(4) The certificant shall submit the following non-refundable fees as applicable:

(A) $60 for Emergency Care Attendant (ECA) or Emergency Medical Technician (EMT);

(B) $90 for EMT-Intermediate (EMT-I) or EMT-Paramedic (EMT-P); and

(C) EMS volunteer--no fee. However, if such an individual receives compensation during the certification period, the exemption ceases and the individual shall pay a prorated fee to the department based on the number of years remaining in the certification period when employment begins. The non-refundable fee for ECA or EMT certification shall be $15 per each year remaining in the certification. The non-refundable fee for EMT-I or EMT-P shall be $22.50 per each year remaining in the certification. Any portion of a year will count as a full year.

(5) Recertification by voluntary downgrade. An individual who holds a Texas EMS certification or paramedic license may renew at a lower level by meeting the requirements of this subsection. The applicant must meet the requirements for the lower level of certification requested as described in subsection (b) or (f) of this section. On the date the downgrade is final, the previous higher level of certification becomes invalid. To regain the original higher level of certification, the candidate shall meet the late recertification requirements outlined in subsection (f) of this section, within one year after the expiration date.

(6) A certificate is not transferable.

(7) Military personnel. A person certified by the department who is deployed in support of military, security, or other action by the United Nations Security Council, a national emergency declared by the president of the United States, or a declaration of war by the United States Congress is eligible for recertification under timely recertification requirements from the person's date of demobilization until one calendar year after the date of demobilization but will not be certified during that period.

(A) In addition to requirements described in this subsection, the candidate shall submit a copy of deployment and demobilization orders.

(B) The four-year certification will commence on issue date of the certificate.

(C) If all requirements are not completed within one year after date of demobilization, the candidate must meet the requirements of late recertification within one additional year, as described in subsection (f) of this section.

(b) Recertification options. Upon submission of a completed application for recertification, the applicant shall commit to, and recertify through one of the options described in paragraphs (1) - (5) of this subsection.

(1) Option 1--Written Examination Recertification Process.

(A) The applicant shall pass the National Registry assessment exam. An overall score of 70 is considered to be passing.

(B) If the applicant fails the examination for recertification, the applicant may attempt two retests of the examination after:

(i) submitting a retest application for each attempt at any eligible level; and

(ii) submitting a non-refundable retest fee of $30 for each attempt.

(C) For each subsequent retest attempt, an applicant may apply for and retest at a lower level by complying with paragraph (1)(B) of this subsection, if applicable.

(D) An applicant who selects option 1 and attempts the exam but does not pass the National Registry assessment examination may not gain recertification by any other option and shall not qualify for inactive certification addressed in §157.33(h) of this title (relating to Certification) or subsection (e) or (f) of this section.

(E) An applicant who does not pass the third attempt at the National Registry assessment examination:

(i) shall successfully complete a Formal Recertification Course as described in paragraph (4) of this subsection; and

(ii) shall submit a course completion certificate of the Formal recertification course, reflecting that the course was completed after the 2nd retest failure; and

(iii) shall pass the National Registry assessment examination in accordance with the provisions in subparagraphs (A) - (D) of this paragraph.

(iv) shall not qualify for more than a total of six attempts at the exam, in any combination of levels attempted.

(F) The certification status of an applicant who does not successfully complete the examination recertification process as described in paragraph (1)(A) - (E) of this subsection shall expire on the date of the current certificate.

(i) The applicant will have until 90 days after expiration date of the current certificate to submit the application, pay the renewal fee of 1-1/2 times the amount described in subsection (a)(4) of this section and successfully complete the examination recertifica-

tion process. If the applicant has already submitted an application and fee prior to the expiration of the certificate, another application will not be required, but an additional one-half fee shall be necessary. If applicable, the retest process, including appropriate retest applications and fees, may continue during the 90-day period.

(ii) If applicant does not apply for and successfully complete the Option 1 recertification process within 90 days following expiration, applicant shall meet requirements of late recertification described in subsection (d)(3) of this section. Another application and a non-refundable renewal fee that is equal to two times the amount designated in subsection (a)(4) of this section shall be required. Successful completion of the late recertification process must be accomplished within one year of expiration.

(iii) A candidate whose certificate has been expired for one year or more may not renew the certificate. The candidate may become certified by complying with the requirements of §157.33(a) or (j) of this title.

(2) Option 2--Continuing Education Recertification Process. The certificant shall attest to accrual of department approved EMS continuing education as specified in §157.38 of this title (relating to Continuing Education).

(3) Option 3--National Registry Recertification Process. The applicant shall attest to and hold current National Registry certification at the time of applying for recertification.

(4) Option 4--Formal Course Recertification Process. The applicant shall attest to successful completion of a department approved recertification course.

(A) The recertification course, as prescribed by the Education and Training Manual, shall be a formal structured interactive training course as approved by the department and conducted within the four-year certification period.

(B) The minimum contact hours required for recertification courses are:
Figure: 25 TAC §157.34(b)(4)(B)

(5) Option 5--CCMP Recertification Process. An applicant affiliated with an EMS provider that has a department-approved Comprehensive Clinical Management Program (CCMP) may be recertified if:

(A) the applicant is currently credentialed in the provider's CCMP;

(B) the applicant has been enrolled in the provider's CCMP for at least six continuous months; and

(C) the applicant submits to the department a signed written statement by the CCMP's medical director, attesting to the applicant's successful participation in and completion of the provider's CCMP.

(6) If a candidate wishes to change options (other than option 1), another application form must be submitted. An additional fee is not required if the candidate completes all requirements within the same time period of the original submission.

(c) After verification by the department of the information submitted by the applicant, that the information is true, correct and complete with regard to the applicant meeting recertification requirements by the certification expiration date, the department shall recertify the applicant for four years, commencing on the day following the expiration date of the most recent certificate. A candidate must verify current certification before staffing an EMS vehicle. Certification may be verified by the applicant's receipt of the official department identification card, by using the department's certification website, or by contacting the department directly.

(d) Late recertification.

(1) The candidate whose certification has expired shall be considered late, non-certified and shall not function in the capacity of an EMS certificant or represent that he is EMS certified until recertification is issued.

(2) A candidate whose certificate has been expired for 90 days or less may renew the certificate by submitting an application accompanied by a non-refundable renewal fee that is equal to 1-1/2 times the normally required application renewal fee for that level as listed in subsection (a)(4) of this section. Applicant shall meet one of the recertification options described in subsection (b)(1) - (5) of this section and submit verification of skills proficiency from an approved education program. If the applicant has already submitted an application and fee, but has not met all of the requirements prior to expiration, another application will not be required, but a total of 1-1/2 times the normally required application renewal fee shall be necessary. The applicant shall be recertified for a period of four years beginning on the date of issuance.

(3) A candidate whose certificate has been expired for more than 90 days but less than one year may renew the certificate by submitting an application accompanied by a non-refundable renewal fee that is equal to two times the normally required application renewal fee as listed in subsection (a)(4) of this section. Applicant shall meet one of the recertification options described in subsection (b)(2) - (6) of this section and submit verification of skills proficiency from an approved education program. If the applicant has already submitted an application and fee, but has not met all of the requirements prior to the 90th day after expiration, another application will not be required, but a total of two times fee shall be necessary.

(4) The applicant shall be recertified for a period of four years beginning on the date of issuance.

(5) A candidate whose certificate has been expired for one year or more may not renew the certificate. The candidate may become certified by complying with the requirements of §157.33(a) or (j) of this title.

(6) A candidate who was certified in this state, moved to another state, and is currently certified or licensed and has been in practice in the other state for two years preceding the date of application may become certified without reexamination. The candidate may gain recertification by:

(A) submitting to the department a non-refundable fee that is equal to two times the normally required renewal fee for certification as listed in subsection (a)(4) of this section; and

(B) attesting to regular practice of emergency medical care in the other state for the two years preceding the date of application.

(e) Renewal of inactive certification.

(1) To renew inactive certification, an applicant holding inactive certification shall submit an application and the non-refundable fee as described in §157.33(a)(4) of this title. The $30 inactive fee is not required for renewal when renewing inactive certification. A candidate who meets requirements for inactive renewal shall be awarded inactive certification for a period of four years beginning on the first day after the expiration of the previous inactive certification.

(2) A candidate whose inactive certification has been expired for 90 days or less may renew the inactive certification during

the 90 day period after expiration of the certification upon submitting a fee of 1-1/2 times the normally required renewal fee as described in subsection (a)(4) of this section. If the applicant has already submitted an application and fee, but has not met all of the requirements prior to expiration, another application will not be required, but a total of 1-1/2 fee shall be necessary. The applicant shall be recertified for a period of four years beginning on the date of issuance.

(3) A candidate whose inactive certification has been expired more than 90 days but less than one year may renew the inactive certification upon submitting a fee of two times the normally required renewal fee as described in subsection (a)(4) of this section. If the applicant has already submitted an application and fee, but has not met all of the requirements prior to the 90th day after expiration, another application will not be required, but a total of two times fee shall be necessary. The applicant shall be recertified for a period of four years beginning on the date of issuance.

(4) A candidate whose inactive certificate has been expired more than one year must regain active certification before reapplying for inactive certification as described in subsection (f) of this section.

(f) Inactive to active certification.

(1) An inactive certificant prior to the expiration of the first four-year inactive certification period may obtain active certification by submitting an application and the non-refundable fee to the department, as described in subsection (a)(4) of this section and by completing one of the following options:

(A) Option 1--meet the normal 4 year continuing education requirement for certification renewal as listed in subsection (b)(2) of this section, submit verification of skills proficiency from an approved education program, and pass the national registry assessment exam.

(B) Option 2--complete a department approved recertification course, and pass the national registry assessment exam.

(2) A certificant who has held inactive certification for more than four years may return to active certification only by completing requirements described in §157.33(a) or (j) of this title.

(g) For all applications and renewal applications, the department 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.

§157.40. Paramedic Licensure.

(a) Requirements for paramedic licensure.

(1) A currently certified paramedic may apply for a paramedic license if the candidate has at least one of the following degrees from an institution of post secondary education which has been accredited by an agency recognized by the U.S. Department of Education as an approved accrediting authority:

(A) an associate degree in emergency medical services (EMS);

(B) a baccalaureate degree; or

(C) a postgraduate degree.

(2) Initial paramedic license. A candidate for initial paramedic licensure under this section shall:

(A) be at least 18 years of age;

(B) submit an application and a nonrefundable fee, if applicable, of $120; EMS volunteer--no fee; however, if the applicant later receives compensation during the renewed licensure period, the exemption ceases and the individual shall pay a prorated fee to the Department of State Health Services (department) based on the number of years remaining in the licensure period when employment begins. The non-refundable fee shall be $30 per each year remaining in the licensure. Any portion of a year that the licensed paramedic receives compensation for his paramedic service will count as a full year.

(C) provide evidence of current active or inactive National Registry certification at the appropriate level;

(D) have met the appropriate requirements in paragraph (1) of this subsection;

(E) submit an official transcript from an accredited institution of post secondary education showing successful completion of at least one of the academic degrees referenced in paragraph (1) of this subsection;

(F) An initial candidate not currently holding a current EMT-paramedic certification shall complete all requirements for licensure no later than two years after the candidate's course completion date. A candidate holding a current EMT-paramedic certification may apply at any time.

(G) The application will expire two years from the date the mailed application is postmarked, or the date a faxed, online submission or hand-delivered application is received at the department.

(i) The National Registry certification described in subparagraph (C) of this paragraph must remain current until the final requirement for paramedic licensure is met.

(ii) The applicant shall update the application if any changes occur between the time of original submission until the final requirement for licensure is met.

(3) Verification of information. After verification by the department of the information submitted by the candidate, a candidate who meets the requirements will be issued a paramedic license valid for a period of four years from the date of issuance of the license. A candidate must verify current licensure before staffing an EMS vehicle. Licensure may be verified by the applicant's receipt of the official department identification card, by using the department's certification website, or by contacting the department directly.

(4) The license is not transferable.

(5) Duplicate copies of the paramedic license may be issued, by the department to replace lost credentials for a fee of $10.

(6) A licensed paramedic may not hold another department EMS certification except for that of EMS course coordinator or EMS instructor.

(b) Renewal of paramedic license.

(1) Prior to the expiration of a license, the department may send a notice of expiration by United States mail or electronic mail to the licensee at the address shown in current records of the department. It is the responsibility of the licensed paramedic to notify the bureau of any change of address.

(2) If a licensed paramedic has not received notice of expiration from the department at least 30 days prior to the expiration of the license, it is the duty of the license holder to notify the department and request an application for renewal of the license. Failure to apply timely for renewal of the license shall result in expiration of the license.

(3) To maintain licensure status without a lapse, an applicant shall submit an application and fee (if applicable) for renewal of a license and shall complete all requirements for renewal of the license

prior to the expiration date, but no earlier than one year prior to the expiration date.

(A) The licensee shall submit a non-refundable fee of $120 with the application.

(B) EMS volunteer--no fee. However, if the applicant later receives compensation during the renewed licensure period, the exemption ceases and the individual shall pay a prorated fee to the department based on the number of years remaining in the licensure period when employment begins. The non-refundable fee shall be $30 per each year remaining in the licensure. Any portion of a year that the licensed paramedic receives compensation for his paramedic service will count as a full year.

(C) Applicants holding a paramedic license may renew by completing any of the recertification options listed in §157.34(b) of this title (relating to Recertification). A licensee selecting Option 2, as defined in §157.34(b)(2) of this title, and in accordance with §157.38 of this title (relating to Continuing Education) may substitute up to 12 contact hours in the "Preparatory" content area and up to 48 contact hours of continuing education in the "Additional Approved Categories" area with any course of non-clinical professional development study approved by the licensee's medical director.

(4) After verification by the department of the information submitted, the paramedic license will be renewed for four years beginning on the day following the expiration date of the license. A new wallet-size card will be issued by the department.

(5) A license is not transferable.

(6) Military personnel. A licensed paramedic who is deployed in support of military, security, or other action by the United Nations Security Council, a national emergency declared by the President of the United States, or a declaration of war by the United States Congress, is eligible for relicensure under timely relicensure requirements from the person's date of demobilization until one calendar year after the date of demobilization, but will not be licensed during that period.

(A) In addition to requirements described in this subsection, the candidate shall submit a copy of deployment and demobilization orders.

(B) If all requirements are not completed within one year after date of demobilization, the candidate must meet the requirements of late paramedic relicensure within one additional year, as described in subsection (c) of this section.

(c) Late paramedic relicensure.

(1) Following the expiration date of the paramedic license, a candidate shall not be considered licensed and may not function in the capacity of an EMS licensee or certificant or represent that he is licensed or certified until relicensure is issued.

(2) A candidate whose paramedic license has been expired for 90 days or less may renew the license by submitting an application accompanied by a non-refundable renewal fee that is equal to 1-1/2 times the normally required application renewal fee for that level as listed in subsection (a)(2)(B) of this section. The applicant shall meet one of the recertification options described in subsection §157.34(b) of this title and submit verification of skills proficiency from an approved education program. If the applicant has already submitted an application and fee, but has not met all of the requirements prior to expiration, another application will not be required, but a total of one and one-half of the fee shall be necessary. The applicant shall be recertified for a period of four years beginning on the date of issuance.

(3) A candidate whose paramedic license has been expired for more than 90 days but less than one year may renew the license by submitting an application accompanied by a non-refundable renewal fee that is equal to two times the normally required application renewal fee as listed in subsection (a)(2)(B) of this section. Applicant shall meet one of the recertification options described in §157.34(b) of this title and submit verification of skills proficiency from an approved education program. If the applicant has already submitted an application and fee, but has not met all of the requirements prior to the 90th day after expiration, another application will not be required, but a total of two times fee shall be necessary.

(4) The applicant shall be licensed for a period of four years beginning on the date of issuance.

(5) A candidate whose license has been expired for one year or more may not renew the license. The candidate may become licensed by complying with the requirements of paragraph (2) of this subsection and §157.33(j) of this title (relating to Certification).

(d) Voluntary downgrades refer to §157.33(g) of this title.

(e) Renewal by voluntary downgrade refer to §157.34(a)(5) of this title.

(f) Inactive paramedic licensure. A licensed paramedic may make application to the department for inactive licensure at any time during the license period or within one year after the license expiration date.

(1) The request for inactive licensure shall be accompanied by a nonrefundable fee of $30 in addition to the regular nonrefundable application fee in subsection (a)(2)(B) of this section. If the final requirement is completed during the three month period after expiration, the application is considered late and the total fee required will be 1-1/2 times the amount in subsection (a)(2)(B) of this section. Volunteers are not exempt from inactive fees.

(2) Period of inactive paramedic licensure.

(A) The inactive license period shall begin upon date of issuance of the notice of inactive license and remain in effect until the end of the original active license period for those candidates who are currently licensed. The candidate's active license is surrendered upon issuance of the notice of inactive certification.

(B) If the candidate is within the final year of active licensure and chooses to renew with inactive licensure, the inactive licensure begins on the first day after the expiration of the current active license and shall remain in effect for four years.

(C) If the candidate applies during and/or completes the final requirement for inactive licensure within one year after the expiration of active license, the inactive license period shall remain in effect for four years from the date of issuance of the notice of inactive licensure.

(3) While holding an inactive licensure, a person shall not practice other than to act as a bystander rendering first aid or cardiopulmonary resuscitation (CPR) or the use of an Automated External Defibrillator in the capacity of a layperson. Practicing in any other capacity for compensation or as a volunteer shall be cause for denial of reentry and decertification.

(4) An individual shall not simultaneously hold inactive and active EMS personnel certification and/or licensure.

(5) Renewal of inactive licensure.

(A) To renew an inactive license, the applicant shall submit an application and the non-refundable fee, as described in subsection (a)(2)(B) of this section before expiration of the inactive license period. A candidate who meets requirements for inactive renewal shall be awarded an inactive license for a period of four years beginning on the first day after the expiration of the previous inactive license.

(B) A candidate whose inactive license has been expired for 90 days or less may renew the inactive license during the 90 day period after expiration of the license upon submitting a fee of 1-1/2 times the normally required renewal fee as described in subsection (a)(2)(B) of this section. If the applicant has already submitted an application and fee, but has not met all of the requirements prior to expiration, another application will not be required, but a total of 1-1/2 times the normally required renewal fee shall be necessary. The applicant shall be relicensed for a period of four years beginning on the date of issuance.

(C) A candidate whose inactive license has been expired more than 90 days but less than one year may renew the inactive license upon submitting a fee of two times the normally required renewal fee as described in subsection (a)(2)(B) of this section. If the applicant has already submitted an application and fee, but has not met all of the requirements prior to the 90th day after expiration, another application will not be required, but a total of two times the normally required renewal fee shall be necessary. The applicant shall be relicensed for a period of four years beginning on the date of issuance.

(D) A candidate whose inactive license has been expired more than one year must regain active licensure before reapplying for an inactive license as described in §157.33(j) of this title.

(g) Inactive to active licensure.

(1) An inactive licensed paramedic prior to the expiration of the first four-year inactive licensure period may obtain active licensure by submitting an application and the non-refundable fee to the department, as described in subsection (a)(2)(B) of this section and by completing one of the following options:

(A) Option 1--meet the normal 4 year CE requirement for paramedic license renewal as listed in §157.34(b)(2) of this title, submit verification of skills proficiency from an approved education program, and pass the national registry assessment exam.

(B) Option 2--complete a department approved recertification course, and pass the national registry assessment exam.

(2) A licensee who has held an inactive paramedic license more than four years may return to active licensure only by completing requirements described in subsection (a)(2) of this section or §157.33(j) of this title.

(h) Reciprocity. A person currently certified by the National Registry and/or certified or licensed as a paramedic in another state, who meets all the requirements of subsection (a)(1), (2)(B), (D), (E) and (G) of this section may apply for paramedic licensure by submitting an application along with a nonrefundable fee of $120 and meeting the requirements set forth in §157.33(i) of this title.

(1) After the department evaluates the application and verifies that the requirements for reciprocity have been met, the candidate will be licensed in Texas for four years from the issuance date of the paramedic license.

(2) Prior to the expiration of the reciprocity license, the certificant shall reapply and renew the license according to the requirements of subsection (b) of this section.

(i) Equivalency. Candidates meeting the following criteria may apply for a paramedic license upon successful completion of the equivalency process as described in subsection (a)(1), (2)(B), (D), (E) and (G) of this section and §157.33(j) of this title:

(1) an individual who completed EMS training outside the United States or its possessions;

(2) an individual who is certified or licensed in another healthcare discipline;

(3) an individual whose department issued EMS certification or license has been expired for more than one year; or

(4) an individual who has held department issued inactive certification or license for more than four years.

(j) Conversion from inactive paramedic certification to inactive paramedic licensure. A certified paramedic currently holding inactive certification who meets all other criteria as defined in subsection (a)(1) of this section may apply for inactive licensure.

(1) The inactive certificant shall:

(A) submit an application for inactive licensure to the department along with a nonrefundable fee of $120; and

(B) submit evidence of the issuance of a degree from an accredited college or university as defined in subsection (a)(1) of this section.

(2) After verification by the department of the information submitted, an inactive paramedic license will be issued for four years beginning on the day of issuance.

(k) For all applications and renewal applications, the department 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.

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 March 31, 2006.

TRD-200601952

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 14, 2006

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

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CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES

SUBCHAPTER I. MENTAL HEALTH CASE MANAGEMENT SERVICES

25 TAC §§412.403, 412.405 - 412.408, 412.410 - 412.413, 412.415 - 412.417

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§412.403, 412.405 - 412.408, 412.410 - 412.413, and 412.415 - 412.417, concerning mental health case management services.

BACKGROUND AND PURPOSE

This subchapter describes requirements for the provision of mental health case management services (MH case management services) funded by or through the department. The proposed amendments include the addition of language that either better explains terms already included in the definitions, or adds newly defined terms, providing clarification for providers and others who are impacted by these rules.

Several new requirements are added to §412.411, relating to Staff Training. These additional requirements are intended to highlight and emphasize that case managers and case manager supervisors must not only comply with the provisions in this subsection, but also with standards and requirements found in other rules of the department. Such other rules include the requirements of Chapter 412, Subchapter G, of this title (relating to Mental Health Community Services Standards), Chapter 404, Subchapter E, of this title (relating to Rights of Persons Receiving Mental Health Services), and Chapter 414, Subchapter L, of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers).

Certain language is moved from §412.405, relating to Eligibility for MH Case Management Services, to §412.413, relating to Medicaid Reimbursement. These changes are proposed to more accurately reflect that, although an individual may meet the basic eligibility criteria for MH case management services, circumstances sometimes exist in which those services are not reimbursable under Medicaid. Moving the language to the section concerning Medicaid reimbursement is intended to assist readers in understanding this distinction.

The proposed amendments also remove all references to the Texas Department of Mental Health and Mental Retardation and replace them with the new agency name, the Department of State Health Services.

Additionally, Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 412.401 - 412.417 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. Sections 412.401, 412.402, 412.404, 412.409, and 412.414 are open for comment without proposed amendments.

SECTION-BY-SECTION SUMMARY

In addition to certain grammatical and formatting changes, as well as changing the references to the Texas Department of Mental Health and Mental Retardation to the Department of State Health Services in §412.403 and §412.417, the following amendments are proposed.

Proposed amendments to §412.403 add language to the definition of "CSSP or community services specialist" to require the CSSP staff to possess demonstrated competency in the provision and documentation of case management services in accordance with the subchapter and with the case management billing guidelines. Also proposed is the addition of the following new definitions: "family partner," "intensive case management," "routine case management," and "strengths-based." Amendments were also made to the definitions of "department," staff member," "uniform assessment," "utilization management guideline," and "wraparound planning," for clarification and a better understanding of these terms as they are used in this subchapter. The definitions are renumbered to accommodate the additions.

Section 412.405, relating to Eligibility for MH Case Management Services, is proposed to be amended by deleting subsection (b) and moving it to §412.413 of this title (relating to Medicaid Reimbursement), as it more accurately refers to the availability of Medicaid reimbursement than to eligibility for the services.

Section 412.406, relating to Establishing Type, Amount, and Duration of MH Case Management Services, is amended to require the department or its designee to notify the individual seeking services or the individual's legally authorized representative, not later than seven days after a determination has been made, whether a request for MH case management services has been authorized or denied. This section and §412.408, relating to Service Limitations, are both amended by deleting references to the section title, "Exhibits," and replacing it with "Guidelines."

Section 412.407, relating to MH Case Management Services, is amended to clarify that an assessment of unmet needs involves discussing what those needs are with the individual, establishing time frames for meeting outcomes, explaining the availability of services and providing case management offsite if it is necessary to facilitate linkage to a needed service.

Proposed amendments to §412.410 include grammatical changes only.

Section 412.411, relating to Staff Training, is amended by the addition of language requiring case managers and supervisors of case managers to receive training and demonstrate competency in the requirements of this subchapter, as well as the requirements of Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards), Chapter 404, Subchapter E, of this title (relating to Rights of Persons Receiving Mental Health Services), and Chapter 414, Subchapter L, of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers). The section is also amended to provide that case managers and case manager supervisors must receive training and demonstrate competency in developing and implementing a case management plan when providing intensive case management services to a child or adolescent.

Section 412.412, relating to Documentation of MH Case Management Services, is amended to reflect the expectation that not only are service provision events to be documented, but attempts to provide the service are expected to be documented as well by the case manager. Additionally, the section is amended to require the case manager to document referrals and the disposition of those referrals made.

Section 412.413, relating to Medicaid Reimbursement, is amended by the addition of language indicating that the department will not reimburse a provider for Medicaid MH case management services provided in excess of eight hours. The section is also amended by the addition of a new subsection (f), the text of which is proposed for deletion from §412.405(b) of this title, relating to Eligibility for MH Case Management Services. This change is intended to clarify that the language more accurately refers to the availability of Medicaid reimbursement than to eligibility for the services, and to assist readers in better understanding the distinction between an individual's eligibility for services and a provider's ability to be reimbursed, under Medicaid, for providing those services.

Section 412.415 is renamed as "Guidelines." In addition, the text of the rule is amended by changing references to "exhibits" to "guidelines," and by correcting the department's address for purposes of obtaining copies of any of the guidelines.

Section 412.416 is amended by the addition of several rules that are referenced in the subchapter.

FISCAL NOTE

Machelle Pharr, Chief Financial Officer, has determined that, for each year of the first five years 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. Pharr 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 interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Dave Wanser, Deputy Commissioner, has determined that, for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to ensure the availability of mental health case management services, that such services will be provided by qualified and trained staff, and that correctly provided and documented services will be appropriately reimbursed by the department.

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 specially intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department 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 Chris DeWitt, Department of State Health Services, Mental Health and Substance Abuse Program Services Unit, 909 West 45th Street - Mail Code 2018, Austin, Texas 78751, or by email to Chris.Dewitt@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' authority to adopt.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §534.052, which requires the adoption of rules necessary and appropriate to ensure the adequate provision of community based mental health services through a local mental health authority; Health and Safety Code, §534.053, which requires the department to ensure that case management services are available in each local mental health authority service area; 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.

The amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 534 and 1001.

§412.403. Definitions.

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

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

(8) CSSP or community services specialist--A staff member who, as of August 31, 2004:

(A) (No change.)

(B) has had three continuous years of documented full time experience in the provision of MH case management services; and [~~.~~]

(C) has demonstrated competency in the provision and documentation of MH case management services in accordance with this subchapter and the MH Case Management Billing Guidelines.

(9) - (10) (No change.)

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

(12) (No change.)

(13) Family partner--Experienced parent (i.e. parent of an individual with a serious emotional disturbance) who provides peer mentoring, education, and support to the caregivers of a child who is receiving mental health community services.

(14) [~~(13)~~] Individual--A person seeking or receiving MH case management services.

(15) [~~(14)~~] IMD or institution for mental diseases--Based on 42 CFR §435.1009, a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness, including medical attention, nursing care, and related services.

(16) Intensive case management--In conjunction with wraparound process planning, this is a focused intervention of coordinating community-based services that assist a child or adolescent in gaining access to necessary care and services appropriate to the individual's needs. It also includes monitoring service effectiveness and proactive crisis planning and management.

(17) [~~(15)~~] LAR or legally authorized representative--A person authorized by law to act on behalf of a child or adolescent with

regard to a matter described in this subchapter, and who may be a parent, guardian, or managing conservator.

(18) [~~(16)~~] LOC or level of care--A designation given to the department's standardized packages of mental health services, based on the uniform assessment and the utilization management guidelines, which specify the type, amount, and duration of MH case management services to be provided to an individual.

(19) [~~(17)~~] Life domains--Areas of life in which a child or adolescent has unmet needs, including but are not limited to safety, health, emotional, psychological, social, educational, cultural, and legal.

(20) [~~(18)~~] MH case management plan--A written document developed by a case manager, in collaboration with the individual and the individual's LAR or primary caregiver, that identifies services needed by the individual and sets forth a plan for how the individual may gain access to the identified services.

(21) [~~(19)~~] Mental health (MH) case management services--Services to assist an individual in gaining and coordinating access to necessary care and services appropriate to the individual's needs.

(22) [~~(20)~~] Primary caregiver--A person 18 years of age or older who has actual care, control, and possession of a child or adolescent.

(23) [~~(21)~~] Provider--An entity that has an agreement with the department to provide general revenue-funded MH case management services, Medicaid-funded MH case management services, or both.

(24) [~~(22)~~] QMHP-CS or qualified mental health professional-community services--A staff member who meets the definition of a QMHP-CS set forth in Subchapter G of this chapter (relating to Mental Health Services Standards).

(25) Routine case management--Primarily site-based services that assist an adult, child or adolescent in gaining and coordinating access to necessary care and services appropriate to the individual's needs.

(26) [~~(23)~~] Site-based--Provided at a case manager's work site.

(27) [~~(24)~~] Staff member--Personnel of a provider including a full-time and part-time employee, contractor, [~~and~~] intern, and [~~but excluding~~] a volunteer.

(28) Strengths-based--Concept used in wraparound planning that identifies, builds on and enhances the capabilities, knowledge, skills and assets of the child and family, their community, and other team members. The focus is on increasing functional strengths and assets rather than on the elimination of deficits.

(29) [~~(25)~~] Uniform assessment--An assessment tool adopted [~~promulgated~~] by the department that includes the Adult Texas Recommended Assessment [~~Authorization~~] Guidelines, the Texas Implementation of Medication Algorithms scales for adults, and the Children and Adolescent Texas Recommended Assessment [~~Authorization~~] Guidelines.

(30) [~~(26)~~]Utilization management guidelines--Guidelines [~~promulgated~~] by the department that establish the type, amount, and duration of MH case management services for each LOC.

(31) [~~(27)~~] Wraparound process planning--A philosophy of care that includes a definable planning process involving the child and family that results in a unique set of community services and natural supports individualized for that child and family to achieve a positive set of outcomes. Wraparound process planning is for a child or adolescent: [~~A strength-based, family-centered, community-based planning process approved by the department through which a MH case management plan is developed.~~]

(A) with serious emotional disturbance;

(B) who has multiple, complex needs;

(C) who may have placement issues; and

(D) who is authorized for a LOC inclusive of intensive case management.

§412.405. Eligibility for MH Case Management Services.

[~~(a)~~] An individual is eligible for general revenue-funded MH case management services if the individual:

(1) is a resident of the State [~~state~~] of Texas;

(2) is an adult with a severe and persistent mental illness, or a child or adolescent with a serious emotional disturbance;

(3) does not have a single diagnosis of mental retardation, pervasive developmental disorder, or substance use disorder; and

(4) qualifies for an LOC that includes MH case management services. [~~;~~]

[~~(b) An individual is eligible for Medicaid-funded MH case management services if, in addition to the criteria set forth in subsection (a) of this section, the individual is:~~]

[~~(1) eligible for Medicaid;~~]

[~~(2) not an inmate of a public institution, as defined in 42 CFR §435.1009;~~]

[~~(3) not a resident of an intermediate care facility for persons with mental retardation as described in 42 CFR §440.150;~~]

[~~(4) not a resident of an IMD;~~]

[~~(5) not a resident of a Medicaid-certified nursing facility, unless the individual has been determined through a pre-admission screening and resident review assessment to be eligible for the specialized service of MH case management services or the individual is expected to be discharged to a non-institutional setting within 180 days;~~]

[~~(6) not a recipient of case management services under another Medicaid program, e.g. the Home and Community Services (HCS) waiver program or Texas Health Steps; and~~]

[~~(7) not a patient of a general medical hospital.~~]

§412.406. Establishing Type, Amount, and Duration of MH Case Management Services.

(a) The department or its designee will make the initial determination of an individual's LOC using the uniform assessment which is referenced as Exhibit A in §412.415 of this title (relating to Guidelines [~~Exhibits~~]); and the utilization management guidelines which are referenced [~~as Exhibit B~~] in §412.415 of this title. If the LOC includes MH case management services, the department or its designee will authorize the individual to receive either routine or intensive MH case management services.

(b) - (d) (No change.)

(e) Upon receipt of a request submitted in accordance with subsection (c) or (d) of this section, the department or its designee will:

(1) (No change.)

(2) based on the review of documentation and an evaluation of available resources, authorize or deny an LOC for the individual, and if authorized, it will authorize the individual to receive either routine or intensive MH case management services; [~~and~~]

(3) if applicable, authorize or deny a request for additional units of service; and[~~.~~]

(4) communicate to the individual or LAR, no longer than 7 days after the determination has been made, whether the service has been authorized or denied.

§412.407. MH Case Management Services.

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

(c) A case manager assigned to an individual who is authorized to receive intensive MH case management services must:

(1) meet face-to-face with the individual and the individual's LAR or primary caregiver within seven days after the case manager is [~~was~~] assigned to the individual or within seven days after discharge from an inpatient psychiatric setting, whichever is later, or document the reasons the meeting did not occur;

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

(5) gather information about the individual's strengths and service needs across life domains from relevant sources, including:

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

(E) other sources identified by the individual or LAR or primary caregiver;

(6) utilize wraparound planning to develop an MH case management plan that addresses the individual's unmet needs across life domains and that includes:

(A) a prioritized list of the individual's unmet needs which includes a discussion of the priorities and needs expressed by the individual and the individual's LAR;

(B) a description of the objective and measurable outcomes for each of the unmet needs as well as a projected time frame for each outcome;

(C) (No change.)

(D) a list of the necessary services and service providers and the availability of the services;

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

(7) assist the individual in gaining access to the needed services and service providers including:

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

(C) arranging, and if necessary to facilitate linkage, accompanying the individual to initial meetings and non-routine appointments;

(D) - (F) (No change.)

(8) monitor the individual's progress toward the outcomes set forth in the MH case management plan including;

(A) - (E) (No change.)

(F) identifying barriers to accessing services or to obtaining [~~obtain~~] maximum benefit from services;

(G) - (J) (No change.)

(9) upon notification that the individual is in crisis, coordinate with the appropriate providers of emergency services to respond to the crisis, as described in §412.314 of this title; and

(10) (No change.)

(d) A case manager must notify an individual in writing of the process for making a complaint to the client rights officers of the provider and the department if the individual expresses dissatisfaction with:

(1) scheduling meetings with the case manager; [~~,~~] or

(2) (No change.)

§412.408. Service Limitations.

(a) (No change.)

(b) Activities that do not constitute MH case management services are identified in the department's MH Case Management Services Billing Guidelines, referenced [~~as Exhibit C~~] in §412.415 of this title (relating to Guidelines [~~Exhibits~~]).

§412.410. Staff Qualifications.

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

(c) A staff member who supervises a case manager must:

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

(3) be trained in accordance with §412.411 of this [~~the~~] title; and

(4) (No change.)

§412.411. Staff Training.

(a) A case manager and a supervisor of a case manager must receive training and demonstrate competency in the following areas:

(1) the requirements of this subchapter and of Chapter 412, Subchapter G, of this title (relating to Mental Health Community Services Standards);

(2) [~~(1)~~] the nature of mental illness and serious emotional disturbance;

(3) [~~(2)~~] the dignity and rights of an individual in accordance with Chapter 404, Subchapter E, of this title (relating to Rights of Persons Receiving Mental Health Services);

(4) [~~(3)~~] awareness and sensitivity in communicating and coordinating services with an individual who has a special physical need such as a hearing or visual impairment [~~interacting with an individual who has a special physical need such as a hearing or visual impairment~~];

(5) [~~(4)~~] responding to an individual's language and cultural needs through knowledge of customs, beliefs, and values of various, racial, ethnic, religious, and social groups;

(6) [~~(5)~~] identifying, preventing, and reporting abuse, [~~and~~] neglect and exploitation in accordance with Chapter 414, Subchapter L, of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers);

[~~(6) the requirements of this subchapter;~~]

(7) - (8) (No change.)

(9) developing and implementing an MH case management plan if the case manager is providing intensive MH case management services to a child or adolescent;

(10) - (11) (No change.)

(12) co-occurring psychiatric and substance use disorders, as described in Chapter 411, Subchapter N of this title (relating to Standards for Services to Individuals [~~Persons~~] with Co-Occurring Psychiatric and Substance Use Disorders (COPSD));

(13) - (17) (No change.)

(b) (No change.)

§412.412. Documentation of MH Case Management Services.

(a) A case manager must document the provision of MH case management services, as well as attempts to provide MH case management services, as follows:

(1) (No change.)

(2) if the service does not involve face-to-face contact with the individual, document:

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

(C) if the service involves face-to-face or telephone contact, and the person with whom the contact was made;

(D) (No change.)

(E) the case manager's signature and credentials of QMHP-CS or CSSP; and [~~.~~]

(3) A case manager must document referrals made and the disposition of each referral.

(b) (No change.)

§412.413. Medicaid Reimbursement.

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

(c) The department will not reimburse a provider for Medicaid MH case management services if:

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

(4) the service provided was not the type, amount, and duration authorized by the department or its designee; [~~or~~]

(5) the service was not provided or documented in accordance with this subchapter; or [~~.~~]

(6) the service provided is in excess of 8 hours per individual per day.

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

(f) An individual is eligible for Medicaid-funded MH case management services if, in addition to the criteria set forth in §412.405 of this title (relating to Eligibility for MH Case Management Services), the individual is:

(1) eligible for Medicaid;

(2) not an inmate of a public institution, as defined in 42 CFR §435.1009;

(3) not a resident of an intermediate care facility for persons with mental retardation as described in 42 CFR §440.150;

(4) not a resident of an IMD;

(5) not a resident of a Medicaid-certified nursing facility, unless the individual has been determined through a pre-admission screening and resident review assessment to be eligible for the specialized service of MH case management services or the individual is expected to be discharged to a non-institutional setting within 180 days;

(6) not a recipient of case management services under another Medicaid program, e.g., the Home and Community Services (HCS) waiver program or Texas Health Steps; and

(7) not a patient of a general medical hospital.

§412.415. Guidelines [~~Exhibits~~].

The following guidelines [~~exhibits~~] are referenced in this subchapter. For information about obtaining copies of the guidelines [~~exhibits~~] contact the Department of State Health Services, Community Mental Health and Substance Abuse Program Services, Mail Code 2018 [~~TDMHMR, Behavioral Health Services~~], P.O. Box 12668, Austin, TX 78711-2668. [~~:~~]

(1) Uniform [~~Exhibit A: uniform~~] assessment guidelines, which include [~~includes~~]:

(A) Adult Texas Recommended Assessment [~~Authorization~~] Guidelines;

(B) - (C) (No change.)

(2) Utilization [~~Exhibit B: utilization~~] management guidelines, which include:

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

(3) [~~Exhibit C:~~] MH Case Management Services Billing Guidelines.

§412.416. References.

The following laws and rules are referenced in this subchapter:

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

(4) Chapter 404, Subchapter E, of this title (relating to Rights of Persons Receiving Mental Health Services);

(5) [~~(4)~~] Chapter 411, Subchapter N of this title (relating to Standards for Services to Individuals [~~Persons~~] with Co-Occurring Psychiatric and Substance Use Disorders (COPSD));

(6) [~~(5)~~] Subchapter G of this chapter (relating to Mental Health Community Services Standards);

(7) §412.314 of this title (relating to Crisis Services);

(8) Chapter 414, Subchapter L, of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers);

(9) [~~(6)~~] §419.457 of this title (relating to Crisis Intervention Services);

(10) [~~(7)~~] §419.459 of this title (relating to Psychosocial Rehabilitative [~~Rehabilitation~~] Services); and

(11) [~~(8)~~] 42 CFR §435.1009 and §440.150.

§412.417. Distribution.

(a) This subchapter shall be distributed to:

(1) members of the Department of State Health Services [~~Texas Department of Mental Health and Mental Retardation Board~~] or the applicable council;

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

(b) (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 April 3, 2006.

TRD-200601977
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 458-7111 x6972

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CHAPTER 419. MENTAL HEALTH SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), proposes amendments to §§419.451 - 419.459, 419.461 - 419.470, and the repeal of §419.460, concerning mental health rehabilitative services.

BACKGROUND AND PURPOSE

This subchapter describes requirements for the provision of mental health rehabilitative services. During the 79th Texas legislative session, the legislature appropriated funds to restore the general counseling benefit to all Medicaid recipients, resulting in an amendment to the Medicaid State Plan. Due to the restoration of the general counseling benefit to all Medicaid recipients, the proposed amendments and repeal include the repeal of §419.460 of this title (relating to Rehabilitative Counseling and Psychotherapy), thus removing the rehabilitative counseling and psychotherapy benefit from the array of rehabilitative services. This change will avoid any duplication of the service that could result in double billing by providers.

Proposed amendments include removal of the word "Medicaid" from the title of the subchapter and from various provisions throughout the affected sections, to reflect that the subchapter applies to all MH rehabilitative services, not just Medicaid rehabilitative services. In addition, throughout the rules, all references to the department are changed from the Texas Department of Mental Health and Mental Retardation to the Department of State Health Services.

Another proposed change is the addition of skills training and development in a group modality (as opposed to one-to-one), to reflect the current understanding, described in recent published scientific literature, that providing this service in a group modality is effective in treating children and adolescents.

Certain language is moved from §419.455, relating to Eligibility, to §419.465, relating to Medicaid Reimbursement. These changes are proposed to more accurately reflect that, although an individual may meet the basic eligibility criteria for MH case management services, circumstances sometimes exist in which those services are not reimbursable under Medicaid. Moving the language to the section concerning Medicaid reimbursement is intended to assist readers in understanding this distinction.

The proposed amendments require that psychosocial rehabilitative services must be provided by members of a clearly defined therapeutic team, and the role and function of that team is described. New language is also proposed to better define and clarify the components of "coordination services" as that term is used in this subchapter.

Additionally, Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 419.451-419.470 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

Certain grammatical and formatting changes are proposed throughout the rules, as well as removal of the word, "Medicaid," from §§419.451-419.456, 419.458, 419.459, 419.461-419.467, and 419.470. References in §419.453 to the Texas Department of Mental Health and Mental Retardation (TDMHMR), and in §419.468 and the division of Behavioral Health Services, are changed to the Department of State Health Services. A reference in §419.470 to TDMHMR or the applicable council is changed to the State Health Services Council. In addition to these changes, the following amendments are proposed.

Section 419.453, relating to Definitions, is amended by revising the definition of the term, "Medicaid provider." A separate definition of the term, "provider," is added as a newly defined term. Also, within the definition of "MH rehabilitative services," the term, "psychosocial rehabilitation services," is changed to "psychosocial rehabilitative services." In addition, the definition of "MH rehabilitative services" is amended by deleting rehabilitative counseling and psychotherapy from the list of enumerated services that are within the array of available rehabilitative services as a result of the restoration of the general counseling benefit to all Medicaid recipients.

Also in §419.453, the definition of "peer provider" is amended by changing the requirement that a peer provider has at least one cumulative year of receiving mental health services "from or through the department" to a requirement that the person has at least one cumulative year of receiving mental health services "for a disorder that is treated in the target population for Texas." This change recognizes that a person may qualify to serve as a peer provider as a result of receiving mental health services outside of Texas, as long as they were treated for a disorder that fall within the target population for Texas. The definition of "peer provider" is also amended by removing the requirement that the person "has demonstrated competency in the provision and documentation of Medicaid MH rehabilitative services in accordance with this subchapter and the Medicaid MH Rehabilitative Services Billing Guidelines." Deletion of this requirement is proposed because it would not be realistic to expect that an individual who is otherwise qualified to serve as a peer provider would be in a position to demonstrate such competence without having first served as a peer provider or in some other capacity as a provider of MH rehabilitative services. To enforce such a requirement would in most, if not all, instances prevent an individual from ever qualifying to serve as a peer provider.

Proposed amendments to §419.455, relating to Eligibility, include the renumbering of paragraph (1) of this section and the deletion of text which is proposed to be moved to §419.465 of this title (relating to Medicaid Reimbursement) to more accurately refer to the availability of Medicaid reimbursement rather than to eligibility for the service.

Proposed amendments to §419.456, relating to Service Authorization and Treatment Plan, include the addition of language in subsection (b)(1)(B) of that section, to require that the medical necessity of crisis intervention services be documented. Also, subsection (d)(2) is amended by adding language to require that, at the time a treatment plan is reviewed, the provider must solicit input from the individual, or from the LAR or primary caregiver of a child or adolescent, regarding the services received to date and whether the services received have led to improvement and/or if there are other services to address unmet needs. This proposed new language replaces language currently in the rule, which is less specific and requires only that input be solicited regarding satisfaction with the services provided. The proposed new language recognizes that while there may be satisfaction with a particular service, it does not mean that the individual or the individual's LAR or primary caregiver believe that the individual's needs have been fully met.

Section 419.457, relating to Crisis Intervention Services, is proposed to be amended by deleting subsection (a)(6) because the rehabilitative counseling and psychotherapy benefit has been removed from the array of rehabilitative services, and the language in this sub-section could be confused with rehabilitative counseling.

Section 419.458, relating to Medication Training and Support, is amended by the addition of language clarifying that medication training and support services consists of instruction and guidance based on curricula promulgated by the department, including the patient/family education program guidelines referenced in §412.468(3) of this title (relating to Guidelines).

Proposed amendments to §419.459 include changing the name of the title to Psychosocial Rehabilitative Services, and changing all references to psychosocial rehabilitation services to psychosocial rehabilitative services. In addition, subsection (b)(1) is amended to require that psychosocial rehabilitative services must be provided by members of a clearly defined therapeutic team, and the role and function of that team is described. Subsection (b)(3) is also amended, to require that the therapeutic team be constituted and organized in a manner that ensures that "every member of the team is knowledgeable of the needs and of the services available to the specific individuals assigned to the team." Finally, amendments are proposed to subsection (c)(2), to more fully describe and clarify the components of "coordination services," as that term is used in this subchapter.

Section 419.460, relating to Rehabilitative Counseling and Psychotherapy is repealed because the general rehabilitative counseling and psychotherapy service is being restored as a benefit to Medicaid recipients, effective December 1, 2005.

Proposed amendments to §419.461, relating to Skills Training and Development Services, include the deletion of subsection (b)(3) and (4) of this section, which will allow providers to provide skills training and development to a child or adolescent in a group setting. The section is also amended by the addition of language indicating that skills training and development services may be provided to an adult, child, adolescent, LAR, or primary caregiver of a child or adolescent. The section is also amended by the deletion of subsection (b)(9) of this section, which requires that skills training and development services provided to an LAR or primary caregiver of a child or adolescent must be provided by either a QMHP-CS or a CSSP.

Proposed amendments to §419.462, relating to Day Programs for Acute Needs, include the addition of two new components of symptom management training, which involves providing assistance and training to individuals in recognizing and reducing their symptoms. The proposed additional components involve training in ways to avoid symptomatic episodes.

Proposed amendments to §419.464, relating to Staff Member Training, include the addition of language to subsection (a)(2)(B) of this section, clarifying that staff must be trained on skills training curricula that has been reviewed and approved by the department.

Section 419.465, relating to Medicaid Reimbursement, clarifies that a provider may only bill for medically necessary services to Medicaid-eligible individuals. It further clarifies that with the exception of crisis intervention services and psychosocial rehabilitative services that are being provided in a crisis situation, the department will not reimburse a Medicaid provider for any combination of MH rehabilitative services delivered in excess of 8 hours per individual per day. The amended rule clarifies that crisis services shall be provided to the individual until the crisis is resolved. The section is also amended by the addition of language that is proposed for deletion from §419.455 of this title (relating to Eligibility), as it more accurately refers to the availability of Medicaid reimbursement than to eligibility for the services.

Section 419.468 is renamed as "Guidelines." In addition, the text of the rule is amended by changing references to "exhibits" are changed to "guidelines," and by correcting the department's address for purposes of obtaining copies of any of the guidelines.

Section 419.469, relating to References, is amended by the addition of several rules that are referenced in the subchapter.

Section 419.470, relating to Distribution, includes the addition of language requiring distribution of this subchapter to the members of the State Health Services Council, and also to be made available by the chief executive officer of each provider to all staff members who deliver MH rehabilitative services.

FISCAL NOTE

Michael D. Maples, Manager, Program Services Unit for the Community Mental Health and Substance Abuse Section, has determined that, for each year of the first five years that the sections will be in effect, there will be fiscal implications to state and local governments as a result of enforcing and administering the sections as proposed. Because the federal Medicaid program is a cost reimbursement program, however, the proposed sections will not result in any significant increase or decrease in costs or revenues to either the state or the LMHAs, as more fully explained below.

The department allocates general revenue to the local mental health authorities (LMHAs) to be used for a variety of mental health community services (the LMHAs are community centers or other entities established by local governments and are, therefore, local governments). In addition, the LMHAs are reimbursed through the federal Medicaid program for providing certain mental health services. Mr. Maples estimates that there will be a decrease in federal funds (and thus, revenues) to the department and to the LMHAs as a result of the discontinuation of the rehabilitative counseling and psychotherapy benefit. The decreased revenues are estimated to be $304,438 for each of fiscal years 2007 - 2011. However, the decreased revenues to the state will be offset by the restoration of the Medicaid general counseling benefit by HHSC.

Mr. Maples also estimates that there will be an increase in federal funds (and, thus, revenues) to the department and to the LMHAs as a result of the new Medicaid benefit of group skills training for children and adolescents. The increased revenues are estimated at $95,839 for each of fiscal years 2007 - 2011. While these increased revenues are less than the decreased revenues resulting from the discontinuation of the rehabilitative counseling and psychotherapy benefit, they represent less than one-half of one percent of the federal funding attributable to the delivery of community mental health services in Texas.

Because the federal Medicaid program is a cost reimbursement program, any increase in costs to state or local governments are anticipated to be equal to the estimated increase in federal revenues for both state and local governments. Therefore, for each year of the first five years that the sections will be in effect, Mr. Maples has determined that there is no foreseeable increase or decrease in costs to state or local governments as a result of enforcing or administering the proposed sections.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples 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 interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Dave Wanser, Deputy Commissioner, has determined that, for each year of the first five years that the sections will be in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to ensure the availability of mental health rehabilitative services, that the need for such services is appropriately assessed and authorized, that the uniqueness of services is clearly delineated between adult and child, that such services will be provided by qualified and trained staff, that correctly provided and documented services will be appropriately reimbursed by the department and that a fair hearings process is available.

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 specially intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Chris Dewitt, Department of State Health Services, Mental Health and Substance Abuse Program Services Unit, 909 West 45th Street, Mail Code 2018, Austin, Texas 78751, or by email to chris.dewitt@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' authority to adopt.

SUBCHAPTER L. MENTAL HEALTH REHABILITATIVE SERVICES

25 TAC §§419.451 - 419.459, 419.461 - 419.470

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §534.052, which requires the adoption of rules necessary and appropriate to ensure the adequate provision of community based mental health services through a local mental health authority; Health and Safety Code, §534.053, which requires the department to ensure that psychosocial rehabilitation programs are available in each local mental health authority service area; 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.

The amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 534 and 1001.

§419.451. Purpose.

The purpose of this subchapter is to describe the requirements for the provision of [~~Medicaid~~] mental health rehabilitative services.

§419.452. Application.

This subchapter applies to providers of [~~Medicaid~~] mental health rehabilitative services.

§419.453. Definitions.

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

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

(4) Arrangement--A contract between a [~~Medicaid~~] provider and a person or entity for the provision of [~~Medicaid~~] MH rehabilitative services.

(5) Authorization period--The duration for which the [~~Medicaid~~] provider has obtained authorization in accordance with §419.456(a) of this title (relating to Service Authorization and Treatment Plan).

(6) - (9) (No change.)

(10) CSSP or community services specialist--A staff member who, as of August 30, 2004:

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

(C) has demonstrated competency in the provision and documentation of [~~Medicaid~~] MH rehabilitative services in accordance with this subchapter and the [~~Medicaid~~] MH Rehabilitative Services Billing Guidelines.

(11) CSU or crisis stabilization unit--A crisis stabilization unit licensed under Chapter 577, of the Texas Health and Safety Code and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units [~~Licensing Rules~~]).

(12) (No change.)

(13) Department--Department of State Health Services [~~The Texas Department of Mental Health and Mental Retardation or its successor~~].

(14) Direct clinical supervision--An LPHA's interaction with a peer provider to ensure that [~~Medicaid~~] MH rehabilitative services provided by the peer provider are clinically appropriate and in compliance with this subchapter by:

(A) (No change.)

(B) conducting, at least monthly, a documented face-to-face observation of the peer provider providing [~~Medicaid~~] MH rehabilitative services.

(15) - (17) (No change.)

(18) Individual--A person seeking or receiving [~~Medicaid~~] MH rehabilitative services.

(19) - (23) (No change.)

(24) LOC or level of care--A designation given to the department's standardized packages of [~~Medicaid~~] MH rehabilitative services, based on the uniform assessment and utilization management guidelines referenced in §419.468 of this title (relating to Guidelines), which specify the type, amount, and duration of [~~Medicaid~~] MH rehabilitative services to be provided to an individual.

(25) (No change.)

(26) LVN or vocational nurse--A person who is licensed as a vocational nurse by the Texas Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 301 or, prior to February 1, 2004, was licensed as a licensed vocational nurse by the Texas Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 302, and whose license has not yet expired.

(27) (No change.)

(28) [~~Medicaid~~] Mental health (MH) rehabilitative services--Services that [~~are reimbursed by Medicaid and~~]:

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

(C) consist of the following services:

(i) - (ii) (No change.)

(iii) psychosocial rehabilitative [~~rehabilitation~~] services which consist of the following component services:

(I) - (VI) (No change.)

[~~*(iv)* rehabilitative counseling and psychotherapy;~~]

(iv) [~~(v)~~] skills training and development services; and

(v) [~~(vi)~~] day programs for acute needs which consist of the following component services;

(I) psychiatric nursing services;

(II) pharmacological instruction;

(III) symptom management training; and

(IV) functional skills training.

(29) Medicaid provider--A Medicaid-enrolled provider with which the department has a Medicaid provider agreement to provide MH rehabilitative services under the State's Medicaid Program [~~An entity with which the department has a provider agreement to provide Medicaid MH rehabilitative services~~].

(30) - (31) (No change.)

(32) On-site--A location operated by a [~~the Medicaid~~] provider or a person or entity under arrangement with the [~~Medicaid~~] provider at which [~~Medicaid~~] MH rehabilitative services are provided, such as a clinic, clubhouse, or office.

(33) Peer provider--A staff member who:

(A) (No change.)

(B) has at least one cumulative year of receiving mental health services for a disorder that is treated in the target population for Texas [~~from or through the department~~]; and

(C) is under the direct clinical supervision of an LPHA[~~; and~~]

[~~(D) has demonstrated competency in the provision and documentation of Medicaid MH rehabilitative services in accordance with this subchapter and the Medicaid MH Rehabilitative Services Billing Guidelines~~].

(34) - (38) (No change.)

(39) Provider--An entity with which the department has a contractual agreement for the provision of MH Rehabilitative Services.

(40) [~~(39)~~] Psychologist--A person who is licensed as a psychologist by the Texas State Board of Examiners of Psychologists in accordance with Texas Occupations Code, Chapter 501.

(41) [~~(40)~~] QMHP-CS or qualified mental health professional-community services--A staff member who meets the definition of a QMHP-CS set forth in Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards).

(42) [~~(41)~~] RN or registered nurse--A staff member who is licensed as a registered nurse by the Texas State Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 301.

(43) [~~(42)~~] Staff member--Personnel of a Medicaid provider including a full-time and part-time employee, contractor, [~~and~~] intern, and [~~but excluding~~] a volunteer.

(44) [~~(43)~~] Therapeutic team--A group of staff members who work together in a coordinated manner for the purpose of providing comprehensive mental health services to an individual.

(45) [~~(44)~~] Uniform assessment--An assessment tool adopted [~~promulgated~~] by the department that includes the Adult Texas Recommended Assessment [~~Authorization~~] Guidelines, the Texas Implementation of Medication Algorithms Scales for Adults, and the Children and Adolescent Texas Recommended Assessment [~~Authorization~~] Guidelines.

(46) [~~(45)~~] Utilization management guidelines--Guidelines developed [~~promulgated~~] by the department that establish the type, amount, and duration of [~~Medicaid~~] MH rehabilitative services for each LOC.

§419.454. General Requirements for Providers of [~~Medicaid~~] MH Rehabilitative Services.

(a) Compliance with MH community standards. In addition to complying with this subchapter, a [~~Medicaid~~] provider must also comply with Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards) in the provision of [~~Medicaid~~] MH rehabilitative services, as described in §412.304(a)(4) [~~(5)~~] and (b)(4) of this title (relating to Responsibility for Compliance).

(b) Staff supervision and oversight. A [~~Medicaid~~] provider must develop policies and procedures for the supervision and oversight of CSSPs and peer providers.

(c) Service provision under arrangement.

(1) A [~~Medicaid~~] provider may choose to have any [~~Medicaid~~] MH rehabilitative service provided by a person or entity under arrangement.

(2) A [~~Medicaid~~] provider must ensure that if [~~Medicaid~~] MH rehabilitative services are provided under arrangement, then the person or entity delivering the [~~Medicaid~~] MH rehabilitative services under arrangement complies with all applicable federal and state laws, rules, and regulations, and any provider manuals and policy clarification letters promulgated by the department.

(d) Prohibitions against discrimination and retaliation.

(1) A [~~Medicaid~~] provider may not discriminate against an individual based on race, color, national origin, religion, sex, age, disability, co-occurring disorder or political affiliation. A [~~Medicaid~~] provider may not deny [~~Medicaid~~] MH rehabilitative services to an individual based on sexual orientation.

(2) A [~~Medicaid~~] provider must ensure that an individual's refusal of any service offered by the [~~Medicaid~~] provider does not preclude the individual from accessing a needed [~~Medicaid~~] MH rehabilitative service.

§419.455. Eligibility.

An individual is eligible for [~~Medicaid~~] MH rehabilitative services if:

(1) the individual:

(A) is a resident of the State of Texas;

[~~(B) is eligible for Medicaid;~~]

(B) [~~(C)~~] is an adult with a severe and persistent mental illness or a child or adolescent with a serious emotional disturbance; and

(C) [~~(D)~~] qualifies for a LOC;

[~~(E) is not an inmate of a public institution as defined in 42 CFR §435.1009;~~]

[~~(F) is not a resident of an intermediate care facility for persons with mental retardation as described in 42 CFR §440.150;~~]

[~~(G) is not a resident in an IMD;~~]

[~~(H) is not a resident in a Medicaid-certified nursing facility unless the individual has been determined through a pre-admission screening and annual resident review assessment to be eligible for the specialized service of Medicaid MH rehabilitative services; and~~]

[~~(I) is not a patient in a general medical hospital;~~] and

(2) a determination that there is a medical necessity for [~~Medicaid~~] MH rehabilitative services for the individual has been made by an LPHA who is:

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

(C) a contractor of an entity designated to make such determinations on behalf of the department, if the LPHA is not otherwise employed by or contracting with an entity providing [~~Medicaid~~] MH rehabilitative services under arrangement with a [~~Medicaid~~] provider.

§419.456. Service Authorization and Treatment Plan.

(a) Prerequisites to provision of services.

(1) Except as provided for crisis intervention services in subsection (b) of this section, prior to a [~~Medicaid~~] provider providing [~~Medicaid~~] MH rehabilitative services to an individual the provider must:

(A) obtain authorization from the department or its designee for the type(s), amount, and duration of [~~Medicaid~~] MH rehabilitative services to be provided to the individual in accordance with the uniform assessment which is referenced [~~as Exhibit A~~] in §419.468 of this title (relating to Guidelines [~~Exhibits~~]); and the utilization management guidelines which are referenced [~~as Exhibit B~~] in §419.468 of this title; and

(B) in collaboration with the individual, develop a treatment plan for the individual in accordance with §412.315(b) of this title (relating to Assessment and Treatment Planning) that also includes a list of the type(s) of [~~Medicaid~~] MH rehabilitative services authorized in accordance with subparagraph (A) of this paragraph.

(2) A [~~Medicaid~~] provider must develop the treatment plan required by paragraph (1)(B) of this subsection within ten days after the date it obtains authorization from the department or its designee for the type(s), amount, and duration of [~~Medicaid~~] MH rehabilitative services.

(b) Documentation of medical necessity and treatment plan requirements for crisis intervention services [~~Authorization and treatment plan requirements for crisis intervention services~~].

(1) An LPHA must, within two business days after the provision of the crisis intervention services:

(A) (No change.)

(B) if a determination is made that there is a medical necessity for crisis intervention services, document the medical necessity for [~~authorize~~] such services.

(2) A [~~Medicaid~~] provider is not required to develop a treatment plan for the provision of crisis intervention services.

(c) Reauthorization of [~~Medicaid~~] MH rehabilitative services.

(1) Prior to the expiration of the authorization period or of the depletion of the amount of services authorized, the [~~Medicaid~~] provider must make a determination of whether the individual continues to need [~~Medicaid~~] MH rehabilitative services.

(2) If the determination is that the individual continues to need [~~Medicaid~~] MH rehabilitative services, the [~~Medicaid~~] provider must:

(A) request another authorization from the department or its designee for the same type and amount of [~~Medicaid~~] MH rehabilitative service previously authorized; or

(B) submit a request to the department or its designee, with documented clinical reasons for such request, to change the type or amount of [~~Medicaid~~] MH rehabilitative services previously authorized if:

(i) the [~~Medicaid~~] provider determines that the type or amount of [~~Medicaid~~] MH rehabilitative services previously authorized is inappropriate to address the individual's needs; and

(ii) the criteria described in the utilization management guidelines for changing the type or amount of [~~Medicaid~~] MH rehabilitative services has been met.

(d) Review of treatment plan.

(1) The [~~Medicaid~~] provider must review the treatment plan to determine if the plan adequately addresses the needs of the individual:

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

(2) At the time the treatment plan is reviewed, the [~~Medicaid~~] provider must:

(A) solicit input from the individual and the LAR or primary caregiver of a child or adolescent regarding the services received to date and whether the services received have led to improvement and/or if there are other services to address unmet needs [~~about whether they are satisfied with the services provided~~]; and

(B) (No change.)

(e) Revisions to the treatment plan. If, after review of the treatment plan the [~~Medicaid~~] provider determines that the treatment plan does not adequately address the needs of the individual, the [~~Medicaid~~] provider must, as appropriate:

(1) (No change.)

(2) request authorization for a change in the type or amount of the [~~Medicaid~~] MH rehabilitative services authorized.

§419.457. Crisis Intervention Services.

(a) Description. Crisis intervention services are interventions provided in response to a crisis in order to reduce symptoms of severe and persistent mental illness or serious emotional disturbance and to prevent admission of an individual to a more restrictive environment. Crisis intervention services include:

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

(5) reality orientation to help the individual identify and manage their symptoms of mental illness. [~~; and~~]

[~~(6) providing guidance and structure to the individual in adapting to and coping with stressors.~~]

(b) (No change.)

§419.458. Medication Training and Support Services.

(a) Description. Medication training and support services consists of instruction and guidance [~~are training~~] based on curricula promulgated by the department. The curricula include the Patient/Family Education Program Guidelines referenced in §419.468(3) of this title (relating to Guidelines), and other materials which have been formally reviewed and approved by the department, to assist an individual in: [~~, which is referenced as Exhibit C in §419.468 of this title (relating to Exhibits), to assist an individual in:~~]

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

(b) Conditions.

(1) Medication training and support services may be provided to:

(A) (No change.)

(B) an eligible [~~a~~] child or adolescent; or

(C) the LAR or primary caregiver of an eligible [~~a~~] child or adolescent.

(2) - (8) (No change.)

(c) Frequency and duration. The provision of medication training and support services must be in accordance with the amount and duration for which the [~~Medicaid~~] provider has obtained authorization in accordance with §419.456 of this title (relating to Service Authorization and Treatment Plan).

§419.459. Psychosocial Rehabilitative [~~Rehabilitation~~] Services.

(a) Description. Psychosocial rehabilitative [~~rehabilitation~~] services are social, educational, vocational, behavioral, and cognitive interventions provided by members of an individual's therapeutic team that address deficits in the individual's ability to develop and maintain social relationships, occupational or educational achievement, and independent living skills that are the result of a severe and persistent mental illness in adults. Psychosocial rehabilitative [~~rehabilitation~~] services may also address the impact of co-occurring disorders upon the individual's ability to reduce symptomology and increase daily functioning. Psychosocial rehabilitative [~~rehabilitation~~] services consist of the following component services:

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

(b) Conditions.

(1) Psychosocial rehabilitative services:

(A) may only be provided to an eligible adult;

(B) - (E) (No change.)

(2) Psychosocial Rehabilitative Services must be provided by members of a clearly identified therapeutic team.

(3) The therapeutic team must be constituted and organized in a manner that ensures that:

(A) the team includes a sufficient number of staff to adequately address the rehabilitative needs of individuals assigned to the team;

(B) team members are appropriately credentialed to provide the full array of component services;

(C) team members have regularly scheduled team meetings either in person or by teleconference; and

(D) every member of the team is knowledgeable of the needs and of the services available to the specific individuals assigned to the team.

(4) [~~(2)~~] Independent living services, coordination services, employment related services, and housing related services, as described in subsection (c)(1) - (4) of this section, must be provided by:

(A) a QMHP-CS;

(B) a CSSP; or

(C) a peer provider.

(5) [~~(3)~~] Medication related services, as described in subsection (c)(5) of this section, must be provided by a licensed medical personnel.

(6) [~~(4)~~] Crisis related services, as described in subsection (c)(6) of this section, must be provided by a QMHP-CS.

(7) [~~(5)~~] As part of the provision of coordination services described in subsection (c)(2) of this section, a QMHP-CS must conduct the uniform assessment at intervals specified by the department to determine the type, amount, and duration of [~~Medicaid~~] MH rehabilitative services.

(c) Components of psychosocial rehabilitative [~~rehabilitation~~] services.

(1) (No change.)

(2) Coordination services are training activities that assist an individual in improving their ability to gain [~~gaining~~] and coordinate [~~coordinating~~] access to necessary care and services appropriate to the needs of the individual. Coordination services include instruction and guidance in such areas as [~~Such services include~~]:

(A) assessment--identifying strengths and areas of need across life domains [~~assessment of the individual to determine the individual's need for services (e.g., medical, educational, social, or substance use services), which includes the administration of the uniform assessment~~];

(B) treatment planning--prioritizing needs and establishing life and treatment goals, selecting interventions, developing and revising treatment plans [~~treatment planning with the individual to develop goals and identify a course of action to respond to the assessed needs~~];

(C) access--identifying potential service providers and support systems across all life domains (e.g., medical, social, educational, substance use), initiating contact with providers and support systems including advocacy groups [~~referral to the appropriate medical, social, educational, substance use providers or other programs and services~~];

(D) coordination--setting appointments, arranging transportation, facilitating communication between providers [~~referral to support services and advocacy groups~~]; and

(E) advocacy--asserting treatment needs, requesting special accommodations, evaluating provider effectiveness and compliance with the agreed upon treatment plan; requesting improvements and modifications to ensure maximum benefit from the services and supports [~~monitoring and follow-up to ensure that the treatment plan developed in accordance with §412.315(b) and (c) of this title (relating to Assessment and Treatment Planning) is implemented effectively and adequately addresses the needs of the individual~~].

(3) - (6) (No change.)

(d) Frequency and duration. The provision of psychosocial rehabilitative services must be in accordance with the amount and duration for which the [~~Medicaid~~] provider has obtained authorization in accordance with §419.456 of this title (relating to Service Authorization and Treatment Plan).

§419.461. Skills Training and Development Services.

(a) Description.

(1) Skills training and development services is training provided to an eligible individual or the LAR or primary caregiver of an eligible [a] child or adolescent. Such training:

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

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

(b) Conditions.

(1) Skills training and development services may be provided to:

(A) an eligible adult;

(B) an eligible [a] child or adolescent; or

(C) (No change.)

(2) Skills training and development services provided to an adult, child, adolescent, LAR or primary caregiver of a child or adolescent may be provided:

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

[~~(3) Skills training and development services provided to a child or adolescent must be provided one-to-one, except that the LAR or primary caregiver may also be present.~~]

[~~(4) Skills training and development services provided to an LAR or primary caregiver of a child or adolescent must be provided one-to-one, except that the child or adolescent may also be present.~~]

(3) [~~(5)~~] Skills training and development services may be provided:

(A) on-site; or

(B) in-vivo.

(4) [~~(6)~~] Skills training and development services provided to a child or adolescent must be provided according to curricula approved by the department.

(5) [~~(7)~~] Skills training and development services provided to an adult must be provided by:

(A) a QMHP-CS;

(B) a CSSP; or

(C) a peer provider.

(6) [~~(8)~~] Skills training and development services provided to a child or adolescent, LAR or primary caregiver must be provided by:

(A) a QMHP-CS; or

(B) a CSSP.

[~~(9) Skills training and development services provided to an LAR or primary caregiver of a child or adolescent, must be provided by:~~]

[~~(A) a QMHP-CS; or~~]

[~~(B) a CSSP.~~]

(7) [~~(10)~~] Skills training and development services may not be provided to an individual who is currently admitted to a CSU.

(c) Frequency and Duration. The provision of skills training and development services must be in accordance with the amount and duration for which the [~~Medicaid~~] provider has obtained authorization in accordance with §419.456 of this title (relating to Service Authorization and Treatment Plan).

§419.462. Day Programs for Acute Needs.

(a) (No change.)

(b) Conditions.

(1) Day programs for acute needs:

(A) may only be provided to eligible adults;

(B) - (C) (No change.)

(2) - (5) (No change.)

(c) Components of day programs for acute needs.

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

(3) Symptom management training assists an individual in recognizing and reducing her or his symptoms and includes training the individual on:

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

(C) ways to avoid symptomatic episodes;

(D) [~~(C)~~] identification of external circumstances that trigger the onset of the acute psychiatric symptoms; and

(E) [~~(D)~~] relapse prevention strategies;

(4) (No change.)

(d) Frequency and duration. The provision of day programs for acute needs must be in accordance with the amount and duration for which the [~~Medicaid~~] provider has obtained authorization in accordance with §419.456 of this title (relating to Service Authorization and Treatment Plan).

§419.463. Documentation Requirements.

(a) General documentation. A [~~Medicaid~~] provider must document the following for all [~~Medicaid~~] MH rehabilitative services:

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

(7) the signature of the staff member providing the service and a notation as to whether the staff member is [~~an LPHA,~~] a QMHP-CS, a pharmacist, a CSSP, an LVN, or a peer provider; and

(8) any pertinent event or behavior relating to the individual's treatment which occurs during the provision of the service.

(b) Service documentation. In addition to the requirements described in subsection (a) of this section, a [~~Medicaid~~] provider must document the following:

(1) for crisis intervention services:

(A) the documentation required by §412.314(c) of this title (relating to [~~Documentation of~~] Crisis Services); and

(B) (No change.)

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

(4) for [~~Medicaid~~] MH rehabilitative services other than crisis intervention services and day programs for acute needs:

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

(5) (No change.)

(c) Frequency of documentation.

(1) (No change.)

(2) For [~~Medicaid~~] MH rehabilitative services other than day programs for acute needs, the documentation required by subsections (a) and (b)(1) - (4) of this section must be made after each face-to-face contact that occurs to provide the [~~Medicaid~~] MH rehabilitative service.

(3) A [~~Medicaid~~] provider must retain documentation in compliance with applicable federal and state laws, rules, and regulations.

§419.464. Staff Member Training.

(a) Training of staff members. A [~~Medicaid~~] provider must provide training to a staff member to ensure competency in the provision of [~~Medicaid~~] MH rehabilitative services. Such training must be provided in accordance with the following:

(1) A staff member who provides [~~Medicaid~~] MH rehabilitative services or supervises the provision of [~~Medicaid~~] MH rehabilitative services must receive training and demonstrate competency in the following areas:

(A) - (L) (No change.)

(M) the treatment of co-occurring psychiatric and substance use disorders as described in Chapter 411, Subchapter N of this title (relating to Standards for Services to Individuals [~~Persons~~] with Co-Occurring Psychiatric and Substance Use Disorders (COPSD));

(N) - (O) (No change.)

(2) A staff member who routinely provides or supervises the provision of Medicaid MH rehabilitative services to a child or adolescent must receive training and demonstrate competency in the following areas:

(A) (No change.)

(B) the department's approved skills training curricula or one that has been reviewed and approved by the department.

(3) Except for the direct clinical supervision of a peer provider, which must be provided by an LPHA, the clinical supervision of the provision of [~~Medicaid~~] MH rehabilitative services must be provided by a QMHP-CS.

(b) Frequency. A staff member must receive the training required by subsection (a) of this section before assuming responsibilities in providing or supervising the provision of [~~Medicaid~~] MH rehabilitative services.

(c) Documentation of training. A [~~Medicaid~~] provider must document that a staff member has successfully completed the training and has demonstrated competencies in the areas described in subsection (a) of this section.

§419.465. Medicaid Reimbursement.

(a) Billable and non-billable activities.

(1) A Medicaid provider may only bill for medically necessary [~~Medicaid~~] MH rehabilitative services that are provided face-to-face to:

(A) a Medicaid-eligible [~~an~~] individual; or

(B) the LAR or primary caregiver of a Medicaid-eligible child or adolescent.

(2) The cost of the following activities are included in the Medicaid MH rehabilitative services reimbursement rate(s) and may not be directly billed by the Medicaid provider:

(A) (No change.)

(B) staffing and team meetings to discuss the provision of [~~Medicaid~~] MH rehabilitative services to a specific individual;

(C) (No change.)

(D) documenting the provision of [~~Medicaid~~] MH rehabilitative services;

(E) a staff member traveling to and from a location to provide [~~Medicaid~~] MH rehabilitative services;

(F) (No change.)

(G) administering the uniform assessment to individuals who are receiving psychosocial rehabilitative services.

(b) Non-reimbursable activities.

(1) The department will not reimburse a Medicaid provider for any combination of [~~Medicaid~~] MH rehabilitative services provided to an individual who is: [~~, other than crisis intervention services, delivered in excess of 8 hours per individual per day. In addition the department will not reimburse a Medicaid provider for more than:~~]

(A) a resident of an intermediate care facility for persons with mental retardation as described in 42 CFR §440.150 [~~two hours per individual per day of medication training and support services~~];

(B) a resident in an IMD [~~four hours per individual per day of psychosocial rehabilitation services~~];

(C) an inmate of a public institution as defined in 42 CFR §435.1009 [~~four hours per individual per day of rehabilitative counseling and psychotherapy~~];

(D) a resident in a Medicaid-certified nursing facility unless the individual has been determined through a pre-admission screening and annual resident review assessment to be eligible for the specialized service of MH rehabilitative services; or [~~four hours per individual per day of skills training and development services; and~~]

(E) a patient in a general medical hospital or who is not Medicaid-eligible [~~six hours per individual per day of day programs for acute needs~~].

(2) With the exception of crisis intervention services and psychosocial rehabilitative services that are being provided in a crisis situation, the [~~The~~] department will not reimburse a Medicaid provider for any combination of MH rehabilitative services delivered in excess of 8 hours per individual per day. In addition, the department will not reimburse a Medicaid provider for more than:

(A) two hours per individual per day of medication training and support services [~~except for crisis intervention services authorized in accordance with §419.456(b) of this title (relating to Service Authorization and Treatment Plan), a Medicaid MH rehabilitative service that is not included in the individual's treatment plan~~];

(B) four hours per individual per day of psychosocial rehabilitative services when the psychosocial rehabilitative services are being provided in non-crisis situations [~~a Medicaid MH rehabilitative service that is not authorized in accordance with §419.456 of this title~~];

(C) four hours per individual per day of skills training and development services [~~a Medicaid MH rehabilitative service provided in excess of the amount authorized in accordance with §419.456(a)(1) of this title~~];

(D) six hours per individual per day of day programs for acute needs; and [~~a Medicaid MH rehabilitative service provided outside of the duration authorized in accordance with §419.456(a)(1) of this title;~~]

(E) crisis services should be provided until resolution of the crisis.

[~~(E) a psychosocial rehabilitative service provided to an individual receiving MH case management services in accordance with Chapter 412, Subchapter I of this title (relating to Mental Health Case Management Services);~~]

[~~(F) a Medicaid MH rehabilitative service that is not documented in accordance with §419.463 of this title (relating to Documentation Requirements);~~]

[~~(G) a Medicaid MH rehabilitative service provided to an individual who does not meet the eligibility criteria as described in §419.455 of this title (relating to Eligibility);~~]

[~~(H) a Medicaid MH rehabilitative service provided to an individual who is not present, awake, and participating during such service; and~~]

[~~(I) any other activity or service identified as non-reimbursable in the department's Medicaid MH Rehabilitative Services Billing Guidelines, which is referenced as Exhibit D in §419.468 of this title (relating to Exhibits).~~]

(3) The department will not reimburse a Medicaid provider for:

(A) a MH rehabilitative service that is not included in the individual's treatment plan (except for crisis intervention services documented in accordance with §419.456(b) of this title (relating to Service Authorization and Treatment Plan) and psychosocial rehabilitative services provided in a crisis situation;

(B) a MH rehabilitative service that is not authorized in accordance with §419.456 of this title (except for crisis intervention services documented in accordance with §419.456(b) of this title);

(C) a MH rehabilitative service provided in excess of the amount authorized in accordance with §419.456(a)(1) of this title;

(D) a MH rehabilitative service provided outside of the duration authorized in accordance with §419.456(b) of this title;

(E) a psychosocial rehabilitative service provided to an individual receiving MH case management services in accordance with Chapter 412, Subchapter I of this title (relating to Mental Health Case Management Services);

(F) a MH rehabilitative service that is not documented in accordance with §419.462 of this title (relating to Documentation Requirements);

(G) a MH rehabilitative service provided to an individual who does not meet the eligibility criteria as described in §419.455 of this title (relating to Eligibility);

(H) a MH rehabilitative service provided to an individual who does not have a current uniform assessment (except for crisis intervention services documented in accordance with §419.456(b) of this title);

(I) a MH rehabilitative service provided to an individual who is not present, awake, and participating during such service; and

(J) any other activity or service identified as non-reimbursable in the department's MH Rehabilitative Services Billing Guidelines, referenced in §419.468 of this title (relating to Guidelines).

(c) Services provided same time and same day.

(1) If a Medicaid provider provides more than one [~~Medicaid~~] MH rehabilitative service to an individual at the same time and on the same day, the Medicaid provider may bill for only one of the services provided.

(2) A Medicaid provider may bill for a [~~Medicaid~~] MH rehabilitative service provided to a child or adolescent's LAR or primary caregiver at the same time and on the same day the child or adolescent is receiving another [~~Medicaid~~] MH rehabilitative service only if the staff member providing the service to the LAR or primary caregiver is different from the staff member providing the service to the child or adolescent.

(d) Services provided before a fair hearing. If the provision of a [~~an Medicaid~~] MH rehabilitative service is continued prior to a fair hearing decision being rendered, as required by Texas Administrative Code, Title 1, §357.7 (relating to Maintaining Benefits or Services), the Medicaid provider may bill for such service.

§419.466. Medicaid Provider Participation Requirements.

(a) Qualifications. To become a Medicaid provider of [~~Medicaid~~] MH rehabilitative services, an entity must:

(1) be established as a community mental health center in accordance with Texas Health and Safety Code, §534.001, that:

(A) provides services comparable to [~~Medicaid~~] MH rehabilitative services and the services described in the Texas Health and Safety Code, §534.053(a)(1) - (7);

(B) (No change.)

(C) conducts criminal history clearances on all contractors delivering [~~Medicaid~~] MH rehabilitative services and all employees and applicants of the Medicaid provider to whom an offer of employment is made and ensures that individuals do not come in contact with and are not provided services by an employee or contractor of the Medicaid provider (or employee or contractor of contractors delivering [~~Medicaid~~] MH rehabilitative services under a contract with the Medicaid provider) who has a conviction for any of the criminal offenses listed in §414.504(g) of this title (relating to Pre-employment and Pre-assignment Clearance) or for any criminal offense that the Medicaid provider has determined to be a contraindication to employment; and

(D) have a Medicaid provider agreement with the department to provide [~~Medicaid~~] MH rehabilitative services; or

(2) be a corporation incorporated or registered to do business in the State of Texas that:

(A) has completed an application evidencing that it:

(i) provides services comparable to [~~Medicaid~~] MH rehabilitative services and the services described in the Texas Health and Safety Code, §534.053(a)(1) - (7);

(ii) - (iii) (No change.)

(iv) conducts criminal history clearances on all contractors delivering [~~Medicaid~~] MH rehabilitative services and all employees and applicants of the corporation to whom an offer of employment is made and ensures that individuals do not come in contact with and are not provided services by an employee or contractor of the corporation (or employee or contractor of contractors delivering [~~Medicaid~~] MH rehabilitative services under a contract with the corporation) who has a conviction for any of the criminal offenses listed in §414.504(g) of this title or for any criminal offense that the corporation has determined to be a contraindication to employment;

(B) - (C) (No change.)

(D) has signed a Medicaid provider agreement with the department to provide [~~Medicaid~~] MH rehabilitative services.

(b) Compliance. A Medicaid provider must:

(1) (No change.)

(2) document and bill for reimbursement of [~~Medicaid~~] MH rehabilitative services in the manner and format prescribed by the department;

(3) - (5) (No change.)

§419.467. Fair Hearings.

(a) Right to request a fair hearing. Any Medicaid-eligible individual whose request for eligibility for [~~Medicaid~~] MH rehabilitative services is denied or is not acted upon with reasonable promptness, or whose [~~Medicaid~~] MH rehabilitative services have been terminated, suspended, or reduced by the department is entitled to a fair hearing in accordance with Texas Administrative Code, Title 1, Chapter 357 (relating to Medical Fair Hearings).

(b) Notice. The Medicaid provider must notify the department or its designee if the provider has reason to believe that an individual's [~~Medicaid~~] MH rehabilitative services should be reduced or terminated.

§419.468. Guidelines [~~Exhibits~~].

The following guidelines [~~exhibits~~] are referenced in this subchapter. For information about obtaining copies of the guidelines [~~exhibits~~] contact the Department of State Health Services, Community Mental Health and Substance Abuse Services, Mail Code 2018 [~~Behavioral Health Services~~], P.O. Box 12668, Austin, TX 78711-2668. [~~:~~]

(1) Uniform [~~Exhibit A: uniform~~] assessment guidelines, which include [~~includes~~]:

(A) Adult Texas Recommended Assessment [~~Authorization~~] Guidelines;

(B) - (C) (No change.)

(2) Utilization [~~Exhibit B: utilization~~] management guidelines, which include:

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

(3) Patient/Family Education Program guidelines, which include [~~Exhibit C~~]:

(A) (No change.)

(B) Child and Adolescent-Patient/Family Education Program [~~Adult~~].

(4) [~~Exhibit D:~~] Medicaid MH Rehabilitative Services Billing Guidelines.

§419.469. References.

The following laws and rules are referenced in this subchapter:

(1) (No change.)

(2) Texas Administrative Code, Title 1, §357.7 (relating to Maintaining Benefits or Services);

(3) [~~(2)~~] Texas Health and Safety Code, Chapters 573, 574, and 577; and §§534.001 and 534.053(a)(1) - (7);

(4) [~~(3)~~] Texas Code of Criminal Procedure, Article 17.032 and Article 42.12, §11(d);

(5) [~~(4)~~] Texas Government Code, §662.021;

(6) [~~(5)~~] Texas Occupations Code, Chapters 155, 204, 301, 302, 501, 502, 503, 505, and 558;

(7) [~~(6)~~] 42 CFR, §435.1009 and §440.150;

(8) [~~(7)~~] Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units [~~Licensing Rules~~]);

(9) [~~(8)~~] Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(10) [~~(9)~~] Chapter 411, Subchapter N of this title (relating to Standards for Services to Individuals [~~Persons~~] with Co-Occurring Psychiatric and Substance Use Disorders (COPSD));

(11) [~~(10)~~] Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards);

(12) Section 412.314 of this title (relating to Crisis Services);

(13) Section 412.315 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization;

(14) [~~(11)~~] Chapter 412, Subchapter I of this title (relating to Mental Health Case Management Services);

(15) [~~(12)~~] Chapter 414, Subchapter L of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers); and

(16) [~~(13)~~] Section 414.504(g) of this title (relating to Pre-employment and Pre-Assignment Clearance) [~~of Chapter 414, Subchapter K of this title (relating to Criminal History Clearances)~~].

§419.470. Distribution.

(a) This subchapter shall be distributed to:

(1) members of the State Health Services Council [~~Texas Department of Mental Health and Mental Retardation Board or the applicable council~~];

(2) (No change.)

(3) chief executive officers of all [~~Medicaid~~] providers of MH rehabilitative services; and

(4) (No change.)

(b) The chief executive officer of each [~~Medicaid~~] provider must make this subchapter readily available to all staff members who deliver these services and provide a copy of this subchapter to all persons and entities delivering [~~Medicaid~~] MH rehabilitative services under arrangement.

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 April 3, 2006.

TRD-200601986
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER L. MEDICAID MENTAL HEALTH REHABILITATIVE SERVICES

25 TAC §419.460

(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 repeal is authorized by Health and Safety Code, §534.052, which requires the adoption of rules necessary and appropriate to ensure the adequate provision of community based mental health services through a local mental health authority; Health and Safety Code, §534.053, which requires the department to ensure that psychosocial rehabilitation programs are available in each local mental health authority service area; 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.

The repeal affects Government Code, Chapter 531; and Health and Safety Code, Chapters 534 and 1001.

§419.460. Rehabilitative Counseling and Psychotherapy.

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 April 3, 2006.

TRD-200601987
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 458-7111 x6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

The Texas Commission on Environmental Quality (commission) proposes amendments to §114.620 and §114.622. The commission also proposes new §§114.624, 114.640, 114.642, 114.644, 114.646, and 114.648.

The new and amended sections are proposed to be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 3469, 79th Legislature, 2005, added Chapter 390 to the Texas Health and Safety Code. This new chapter directs the commission to establish and administer a clean school bus program within the financial limits set by amended §386.051 and §386.052 (HB 3469, 79th Legislature). This clean school bus program will fund efforts by school districts to improve the health of children by reducing emissions of diesel exhaust from school buses. Reduction of emissions from diesel-powered school buses will also benefit the public in ozone nonattainment areas by reducing emissions of nitrogen oxides (NO_x).

The commission is proposing new §§114.640, 114.642, 114.644, 114.646, and 114.648 to establish this program. Under these proposed sections, school districts, charter schools, and regional planning organizations would be eligible for reimbursement grants for the use of emissions reducing catalysts, particulate filters, qualifying fuels, and other emissions reducing add-on equipment or technology that the commission finds will reduce emissions.

House Bill 2481, 79th Legislature, 2005, added §386.117 to the Health and Safety Code to add a rebate grant program under the Texas Emissions Reduction Plan (TERP). New §114.624 is proposed to implement this program. The rebate grant will streamline the grant application process for some applicants and will ease the administrative burden on program staff.

Proposed amendments to §114.622 will clarify that for replacement and repower projects, the baseline vehicle, equipment, or engine must be scrapped or permanently removed from the State of Texas. Proposed amendments to §114.620 and §114.622 create an option for the commission to use an equivalent measure to the current $13,000 per ton cost effectiveness standard or an alternative approved by the commission. These amendments will improve TERP program effectiveness by ensuring that high-emitting engines cannot be reintroduced into an affected county and allowing the commission to increase the emissions reductions created by grants.

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout this rulemaking to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The proposed amendment to §114.620 modifies the definition of "Cost-effectiveness" to clarify how the cost-effectiveness of TERP grant applications will be determined. The proposed amendment to §114.622 clarifies that, for grants entailing replacement or repower of an engine or other equipment, the original equipment must be permanently removed from the State of Texas. The proposed amendment to §114.622 also clarifies that the commission may establish cost-effectiveness standards lower than the statutory $13,000 per ton and that the commission may also make project selection decisions on a variety of factors in addition to cost-effectiveness.

Proposed new §114.624, Rebate Grant Process, establishes a process that awards TERP funds as a rebate. This new process would provide for ongoing, first-come, first-served awarding of standardized rebates for designated project types. It would create a simple, streamlined process to award TERP funds.

Proposed new §114.640, Definitions, provides definitions for the Texas Clean School Bus Program. This section provides definitions for important terms in the proposed new division.

Proposed new §114.642, Applicability, establishes program eligibility for school districts and charter schools. This proposed section also allows regional planning organizations, such as Councils of Government, and private nonprofit organizations to apply for and receive grants to improve the program.

Proposed new §114.644, Clean School Bus Program Requirements, establishes basic program requirements, including: the types of projects eligible for a clean school bus grant; the ability of the commission to limit or prioritize funding for the Texas Clean School Bus Program; the minimum useful life of a project under the grant program; a requirement that replaced equipment be permanently removed from the State of Texas; restricting the use of grant funds to pay incremental costs associated with the project and prohibition against using the grant for administrative expenses; prohibition against recipients using grant funding to meet federal or state legal requirements and using emissions reductions as part of an emissions banking or trading program; grant application requirements; and obligation of the grant recipient to return grant funds if they fail to meet the terms of a project grant or conditions of the proposed division.

Proposed new §114.646, Monitoring, Recordkeeping, and Reporting Requirements, establishes that grant recipients must adhere to the reporting requirements of their grant, which will occur no less frequently than annually.

Proposed new §114.648, Implementation Schedule, establishes that the Texas Clean School Bus program will expire on August 31, 2013.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state government as a result of administration or enforcement of the proposed rules. The proposed rules provide a mechanism to implement the "clean school bus program" and amend some provisions of the existing TERP program to provide more program flexibility and clarification of requirements. Fiscal implications are anticipated for regional planning organizations and local independent school districts if, when funding becomes available, they elect to participate in a "clean school bus program" or apply for a TERP grant.

House Bills 2481 and 3469, 79th Legislature, amended parts of the Texas Health and Safety Code to direct the commission to: 1) add a rebate grant program under the Texas Emissions Reduction Plan (TERP); and 2) establish and administer a clean school bus program if TERP funds are available after achieving the emission reduction objectives of the State Implementation Plan (SIP). One part of the proposed rulemaking provides the mechanism to administer and manage a grant and rebate program to promote the use of cleaner diesel buses in schools. Under this program, independent school districts, charter schools, and regional planning organizations could become recipients of TERP funds (Account 5071) in order to reduce emissions of diesel exhaust from school buses. Another part of the proposed rulemaking clarifies requirements for TERP replacement and repower projects and amends the manner in which the cost effectiveness of projects applying for TERP grant funds will be judged.

Although the proposed rules establish the needed framework for a clean school bus program, two criteria established for making TERP revenue available to fund clean school bus program grants are not expected to be met in the current biennium. The commission does not anticipate that TERP funds will exceed the comptrollers' revenue estimate, nor does the commission anticipate that excess TERP funds will be available after funding projects to meet the SIP objectives for air quality. In addition, the commission was not granted the needed appropriation authority to fund grants under the clean school bus program during the 2006 - 2007 biennium.

Once the commission is given the needed appropriation authority, and TERP revenues reach the levels required to fund a clean school bus program, the estimated 1,255 independent school districts and charter schools in Texas could become eligible to receive funds in the form of reimbursement grants to reduce emissions from the estimated 35,142 diesel-powered school buses in the state. The proposed rules would also allow regional planning organizations to become grant recipients for the purpose of achieving the goals of the clean school bus program in their region.

Under the clean school bus program, participation is voluntary, and grant funds are intended to offset the costs of using school buses that emit lower levels of air contaminants. Whether grant funding would be sufficient to offset the total cost of complying with grant requirements for these school buses depends on the amount of funding available, the number and age of qualifying buses, and the cost of the methods chosen by grant recipients to meet grant requirements. Options to utilize buses with lower diesel emissions run from a cost of $0.13 more per gallon of emulsified diesel fuel to $10,000 for diesel particulate filters.

Currently, local governments can apply for funds under the existing TERP grant program to reduce vehicle emissions in the 41 counties covered by the TERP program. The proposed rulemaking, by making the criteria for judging cost effectiveness more flexible, may allow projects, not currently funded by TERP grants, to receive funding. Given the wide universe of applicants and types of projects that could be funded by TERP grants, the fiscal implications to local governments are not known at this time.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the establishment of a program, which when funded, will promote lower emissions of air contaminants.

If funding to implement the "clean school bus program" becomes available, school districts or charter schools transporting school children could become recipients of monies which could lower their costs of using buses that have lower diesel emissions. The proposed rulemaking provides a variety of acceptable options to lower diesel emissions from school buses. These options range from a cost of $0.13 more per gallon of emulsified diesel fuel to $10,000 for diesel particulate filters.

Due to increased flexibility in judging cost effectiveness, businesses applying for TERP grants may see projects not previously funded receive TERP funding.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that serve as third party contractors to transport school children. If funding to implement the program becomes available, small or micro-businesses may qualify to receive grant funding to offset the costs associated with complying with the program's requirements. Increased flexibility in judging the cost effectiveness of a TERP grant project may increase the amount of TERP funding received by small or micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal is not subject to §2001.0025 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed amendments to Chapter 114 modify the existing rules in accordance with House Bill 3469, 79th Legislature, which amended Texas Health and Safety Code, §386.051(b) and added Texas Health and Safety Code, Chapter 390 to require the commission to establish a Clean School Bus Program. The Clean School Bus Program is intended to reduce diesel exhaust emissions from school buses by funding eligible projects. These rule amendments are part of a voluntary incentive program with the goal of reducing diesel emissions and as such, the proposed rules will not 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 the state or a sector of the state.

Further, the proposed amendments to Chapter 114 modify the existing rules in accordance with House Bill 2481, 79th Legislature, which amended Chapter 386, Subchapter C of the Texas Health and Safety Code by adding §386.117, directing the commission to adopt a process to award grants in the form of rebates to streamline the grant application, contracting, reimbursement, and reporting processes for certain projects under the TERP. These rules amendments will implement procedural changes and will have no effect on the environment or human health. These rule amendments are part of a voluntary incentive program with the goal of reducing diesel emissions and as such, the proposed rules will not 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 the state or a sector of the state.

In addition, a draft regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the proposed technical requirements are consistent with applicable federal standards. In addition, this proposal does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with House Bill 3469 and House Bill 2481. These amendments implement a voluntary program and only affect motor vehicles and equipment which are not considered to be private real property. Therefore, promulgation and enforcement of these proposed rules are neither a statutory nor a constitutional taking because they do not affect private real property. Therefore, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The applicable goal of the CMP is to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The specific CMP policy applicable to these rules is that commission rules comply with 40 Code of Federal Regulations (CFR), to protect and enhance air quality in coastal natural resource areas (31 TAC §501.32). The commission reviewed this proposed rulemaking for consistency with the Texas CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies because this proposed rulemaking action would reduce air pollution from diesel-powered school buses. No new sources of air contaminants are authorized and nitrogen oxides and particulate air emissions would be reduced as a result of these rules. This proposed rulemaking complies with 40 CFR Part 51. This proposed action is part of the control strategy for ozone nonattainment areas in accordance with SIP requirements in 40 CFR Part 51 and reduces emissions of particulate matter consistent with National Ambient Air Quality Standards set for particulate matter in 40 CFR Part 50.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the proposed rules will reduce emissions of air pollutants.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on May 9, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building F, Room 2210. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Holly Vierk at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Holly Vierk, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2006-016-114-EN. The proposed rules may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. Comments must be received by 5:00 p.m., May 16, 2006. For further information please contact Erik Gribbin, Air Quality Planning and Implementation Division, (512) 239-2590.

DIVISION 3. DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM FOR ON-ROAD AND NON-ROAD VEHICLES

30 TAC §§114.620, 114.622, 114.624

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties under the Texas Water Code; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments and new section are also proposed under Texas Health and Safety Code, Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Chapter 386, which establishes the TERP. Finally, the amendments and new section are proposed as part of the implementation of House Bill 2481, 79th Legislature, 2005.

The proposed amendments and new section implement Texas Clean Air Act, §§382.002, 382.011, 382.012, 382.017, 386.051, and House Bill 2481, 79th Legislature, 2005.

§114.620. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA; and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cost-effectiveness--The total dollar amount expended divided by the total number of tons of nitrogen oxides emissions reduction attributable to that expenditure. In calculating cost-effectiveness, one-time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate.

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

(8) Qualifying fuel--Any liquid or gaseous fuel or additives registered or verified by the United States Environmental Protection Agency [~~EPA~~] that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of nitrogen oxides emissions beyond reductions required by state or federal law.

(9) (No change.)

(10) Retrofit--To equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency [~~EPA~~] after manufacture of the original engine and fuel system.

(11) (No change.)

§114.622. Incentive Program Requirements.

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

(c) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise permanently removed from the State of Texas. [~~removed from all counties listed in §114.629 of this title (relating to Applicable Counties and Implementation Schedule).~~]

(d) To be eligible for a grant, the cost-effectiveness of a proposed project as listed in subsection (a) of this section, except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, must not exceed a cost-effectiveness of $13,000 per ton of NO_x emissions reduced. The commission may set lower cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base project selection decisions on additional measures to evaluate the effectiveness of projects in reducing NO_x emissions in relation to the funds to be awarded. [~~$13,000 per ton of~~ ~~$NO_x$~~ ~~emissions.~~]

(e) - (i) (No change.)

§114.624. Rebate Grant Process.

(a) This section establishes a process to provide fast and simple access to rebate grants, in accordance with Texas Health and Safety Code, §386.117.

(b) The rebate grant process shall:

(1) designate certain types of projects eligible for rebates;

(2) project standardized oxides of nitrogen emissions reductions for each designated project type;

(3) assign a standardized rebate amount for each designated project type;

(4) allow for processing rebates on an ongoing first-come, first-served basis; and

(5) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting processes for designated project types.

(c) The commission may:

(1) award rebate grants as a pilot project for a specific region or may award the grants statewide;

(2) limit or expand the designated project types as necessary to further the goals of the program; and

(3) administer the rebate grants or may designate another entity to administer the grants.

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 March 31, 2006.

TRD-200601933
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 239-0177

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DIVISION 4. TEXAS CLEAN SCHOOL BUS PROGRAM

30 TAC §§114.640, 114.642, 114.644, 114.646, 114.648

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties under the Texas Water Code; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The new sections are also proposed under Texas Health and Safety Code, Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; Chapter 386, which establishes the TERP; and Chapter 390, which establishes the Clean School Bus Program. Finally, the new sections are proposed as part of the implementation of House Bill 3469, 79th Legislature, 2005.

The new sections implement Texas Clean Air Act, §§382.002, 382.011, 382.012, 382.017, 386.051, and House Bill 3469, 79th Legislature, 2005.

§114.640. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) Diesel exhaust--One or more of the air pollutants emitted from an engine by the combustion of diesel fuel, including particulate matter, nitrogen oxides, volatile organic compounds, air toxics, and carbon monoxide.

(2) Incremental cost--The cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business. Incremental costs may include added lease or fuel costs as well as additional capital costs.

(3) Qualifying fuel--Includes any liquid or gaseous fuel or additive registered or verified by the United States Environmental Protection Agency, other than standard gasoline or diesel, that is ultimately dispensed into a school bus that provides reductions of emissions of particulate matter.

(4) Repower--To replace an old engine powering an on-road or non-road diesel with a new engine; a used engine; a remanufactured engine; or electric motors, drives, or fuel cells.

(5) Retrofit--To equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

§114.642. Applicability.

(a) Any school district or charter school in this state that operates one or more diesel-fueled school buses or a transportation system provided by a countywide school district may apply for and receive a grant under the program.

(b) The commission may allow a regional planning commission, council of governments, or similar regional planning agency created under Local Government Code, Chapter 391, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

§114.644. Clean School Bus Program Requirements.

(a) Eligible projects include:

(1) diesel oxidation catalysts for school buses built before 1994;

(2) diesel particulate filters for school buses built from 1994 to 1998;

(3) the purchase and use of emission-reducing add-on equipment for school buses, including devices that reduce crankcase emissions;

(4) the use of qualifying fuel; and

(5) other technologies that the commission finds will bring about significant emissions reductions.

(b) The commission may limit funding under a particular funding round to certain areas of the state, types of applicants, and/or types of projects. The commission may place a priority on funding for projects conducted in areas that do not attain certain national ambient air quality standards.

(c) Prior to each funding period, the commission may establish priorities and other criteria for reductions in diesel exhaust emissions to be achieved by projects funded during that period, including designation of additional pollutants to be addressed. A proposed project must achieve a reduction in emissions of diesel exhaust compared with the baseline emissions according to the percentage reduction level and other priorities established by the commission. The commission may also establish maximum levels for the funding awarded in relation to the emission reductions projected to be achieved by a project, in order to maximize the use of available funds.

(d) A school bus proposed for retrofit must be used on a regular, daily route to and from a school and have at least five years of useful life remaining unless the applicant agrees to remove the retrofit device at the end of the life of the bus and reinstall the device on another bus.

(e) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise permanently removed from the State of Texas.

(f) An application for a grant under this program is only eligible if it is made on the form provided by the commission and contains the information required by the commission.

(g) A recipient of a grant under this division shall use the grant to pay incremental costs of the project for which the grant is made, which may include the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

(h) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(i) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document or the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(j) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

§114.646. Monitoring, Recordkeeping, and Reporting Requirements.

Grant recipients must meet the reporting requirements of their grant, which must occur no less frequently than annually.

§114.648. Implementation Schedule.

This division expires August 31, 2013.

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 March 31, 2006.

TRD-200601934
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 239-0177

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CHAPTER 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (commission) proposes amendments to §§291.8, 291.15, 291.21, 291.22, 291.24, 291.26, 291.28, 291.29, 291.31, 291.34, and 291.81. The commission also proposes to add new §291.35.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

During the 79th Legislature, 2005, the legislature passed House Bill (HB) 1358, HB 2301, and Senate Bill (SB) 1063. HB 1358 amended the Texas Water Code (TWC) by adding new §13.004. This new section of the TWC outlines the jurisdiction of the commission over certain water supply or sewer service corporations. HB 2301 amended TWC, §13.187(c), by clarifying that the regulatory authority may disallow nonsupported costs if the utility fails to timely provide documentation or other evidence to support the costs shown in a rate application.

SB 1063 amended §10.08(a), Chapter 966, Acts of the 77th Legislature, 2001, by deleting the exception that a public utility that provided utility service in only 24 counties on January 1, 2003, was exempt from specific requirements. SB 1063 also amended §10.08(a) by specifying that the changes in law made by this article to Chapter 13 apply to a proceeding in which the agency has not issued a final order before September 1, 2001. Additionally, SB 1063 amended TWC, §13.145, Multiple Systems Consolidated Under Tariff, by adding a new subsection (b) which states, "This section does not apply to a public utility that provided utility service in only 24 counties on January 1, 2003."

In addition to changes based on HB 1358, HB 2301, and SB 1063, the commission proposes to amend §291.28 based upon concerns expressed by utility customers about the recovery of rate case expenses. The amendment will specify under what circumstances a utility may recover rate case expenses. This section of Chapter 291 implements TWC, §13.185(h), and TWC, §13.382, which relate to when a utility may recover rate case expense including attorney fees and expert witness fees incurred as a result of a rate change application.

SECTION BY SECTION DISCUSSION

Subchapter A, General Provisions

The commission proposes to amend §291.8, Administrative Completeness, by deleting ". . . or 30 days for a utility that provided service in only 24 counties on January 1, 2003 . . ." in subsection (b). The commission proposes this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission proposes to amend §291.15, Notice of Wholesale Water Supply Contract, by deleting ". . . except that this requirement does not apply to a utility that provided service in only 24 counties on January 1, 2003 . . ." in subsection (b)(9). The commission proposes this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

Subchapter B, Rates, Rate Making, and Rates/Tariff Changes

The commission proposes to amend §291.21, Form and Filing of Tariffs, by deleting the subsection (n) reference in subsection (o). Revised subsection (o) states: "Exception. Subsection (m) of this section does not apply to a utility that provided service in only 24 counties on January 1, 2003." The commission also proposes to amend subsection (n) to correspond with the amendment to subsection (o). The commission proposes this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission proposes to amend §291.22, Notice of Intent To Change Rates, by deleting the language, "A utility that provided service in only 24 counties on January 1, 2003 is required to provide the statement of intent to changes rates at least 30 days prior to the proposed effective date" in subsections (a), (c), (d), and (e). Additionally, the commission proposes to delete "Paragraphs (3) and (4) of this subsection do not apply to a utility that provided service in only 24 counties on January 1, 2003" from subsection (a). These changes will remove the exemption for utilities that provided service in only 24 counties on January 1, 2003. The commission proposes these amendments to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission proposes to amend §291.24, Jurisdiction over Affiliated Interests, by deleting, "Except for a utility that provided service in only 24 counties on January 1, 2003 . . ." in subsection (b). This change will remove the exemption for utilities that provided service in only 24 counties on January 1, 2003. The commission proposes this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission proposes to amend, §291.26, Suspension of Rates, by deleting "This provision does not apply to a utility that provided service in only 24 counties on January 1, 2003" from subsection (c). The commission proposes this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission proposes to amend §291.28, Action on Notice of Rate Change Pursuant to Texas Water Code, §13.187(b), by deleting ". . . or the 61st day for a utility serving in 24 counties on January 21, 2003 . . ." in paragraph (1). This change will remove the exemption for utilities that provided service in only 24 counties on January 1, 2003. The commission proposes this change to implement the amendment by SB 1063 to §10.08(a), Chapter 966, Acts of the 77th Legislature, 2001. The commission proposes to amend §291.28(4) by adding the words "cost or" before the word "expenses" at the end of the paragraph. The commission proposes this amendment to implement HB 2301. Additionally, the commission proposes to add §291.28(7) - (9) to establish criteria by which the commission can determine the amount of reasonable and just rate case expense recovery allowed to a utility based upon concerns about rate case expenses expressed by utility customers. Utility customers have expressed concern over the possibility that utilities may have an incentive to overreach in their rate applications if utilities believe that the customers ultimately will bear all rate case expenses. The purpose of this rule change is to set out clearly certain instances when, as a matter of law, rate case expenses will be considered unreasonable, unnecessary, and against the public interest. In particular, two rules are proposed where rate case expenses will be disallowed as a matter of law. The first (§291.28(8)) states that a utility may not recover any rate case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate. The second (§291.28(9)) states that a utility may not recover any rate case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer by all ratepayer parties. Section 291.28(7) was also added to make it clear that all rate case expenses will be evaluated to see if they are reasonable, necessary, and in the public interest on a case-by-case basis. Therefore, even if the criteria outlined in the new §291.28(8) or (9) are not met, the commission may still disallow all or a portion of rate case expenses in its discretion if they are not found to be reasonable, necessary, and in the public interest.

The commission proposes to amend §291.29, Interim Rates, by deleting "This provision does not apply to a utility that provided service in only 24 counties on January 1, 2003" from subsections (c) and (k). This change will remove the exemption for utilities that provided service in only 24 counties on January 1, 2003. The commission proposes this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission proposes to amend §291.31, Cost of Service, by deleting subsection (b)(2)(K) which reads, "subparagraph (J) of this paragraph does not apply to a utility that provided service in only 24 counties on January 1, 2003." This change will remove the exemption for utilities that provided service in only 24 counties on January 1, 2003. The commission proposes this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission solicits comments on the specific criteria appropriate for ascertaining costs to be added to the historical test year expenses as known and measurable.

The commission proposes to amend §291.34, Alternative Rate Methods, by deleting "The commission may not utilize an alternate method of establishing rates based upon whether the rate is more affordable for a utility that provided utility service in only 24 counties on January 1, 2003" from subsection (a). This change will remove the exemption for utilities that provided service in only 24 counties on January 1, 2003. The commission proposes this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission proposes to add new §291.35, Jurisdiction of Commission over Certain Water or Sewer Supply Corporations, to state that the commission has the same jurisdiction over certain water supply or sewer service corporations that it has over a water and sewer utility as specified in TWC, §13.004. The commission proposes this amendment to implement TWC, §13.004, as added by the 79th Legislature.

Subchapter E, Customer Service and Protection

The commission proposes to amend §291.81, Customer Relations, by deleting the first sentence of subsection (d)(4). This will remove the exemption for utilities that provided service in only 24 counties on January 1, 2003. The commission proposes this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or any other unit of state or local government. The proposed rules in general would affect investor-owned water and sewer utilities and nonprofit water supply or sewer service corporations.

The proposed rules implement HB 1358, HB 2301, and SB 1063, 79th Legislature, 2005. The proposed rules also amend provisions relating to when a utility may recover rate case expenses, including attorney fees and expert witness fees, incurred as the result of a water utility rate change application.

HB 1358

The proposed rules provide that the commission has the same jurisdiction over a nonprofit water or sewer supply corporation that it has over investor-owned water and sewer utilities if the commission finds that the utility is failing to conduct annual or special meetings in compliance with state law or is operating in a manner that does not comply with the requirements for classification as a nonprofit water supply or sewer service corporation. If the water supply or sewer service corporation voluntarily converts to a special utility district, however, the commission's jurisdiction would end. These provisions are not expected to result in a significant increase in workload for the agency as it is assumed that utilities would generally be in compliance with state law and regulations.

HB 2301

The proposed rules clarify that the commission may disallow unsupported costs if a utility fails to timely provide documentation or other evidence to support the costs shown in a rate application. This clarification is not expected to result in any fiscal implications for the agency or affected utilities.

SB 1063

Any public utility that provided utility service in only 24 counties on January 1, 2003, is exempt from various business and rate provisions in the TWC. SB 1063 amended these provisions. The proposed rules would require all investor-owned utilities to operate under a single regulatory scheme with the exception of a single tariff system. One investor-owned utility would still be able to continue collecting a universal rate while all other utilities would be required to establish regional rates. As part of the proposed changes, the effective date for the proposed rate change for this utility would now be at least 60 days after the rate change application and notice are received and declared administratively complete by the commission instead of the current time frame of 30 days.

Rate Case Expenses

Finally, the proposed rules would provide that a utility may recover rate case expenses, including attorney and expert witness fees, incurred as a result of a rate change application if the expenses are reasonable and necessary, but under certain conditions, the amount of expenses collected by the utility may be reduced or eliminated.

Currently, utilities may recover rate case expenses if the commission determines that the expenses are reasonable and necessary. The proposed rules would reduce the amount of the rate case expenses paid to utilities by ratepayers if the increase in revenue generated by the determined rate is less than 51% of the increase in revenue that would have been generated by the proposed rate. In addition, utilities would not be able to recover rate case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the determined rate is less than or equal to the revenue that would have been generated by the settlement offer. These provisions are intended to provide an incentive for settlement negotiations between the utilities and ratepayers, and may reduce the amount of rate case expenses paid to utilities if it is determined that the rate request was too high. Based upon previous years, the commission has two or three contested case rate hearings each year. The proposed rules may reduce the number of contested case hearings and if so, may reduce the costs associated with these hearings, though in general any cost savings are not expected to be significant.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and greater clarity in rules relating to rate cases.

In general, no significant fiscal implications are anticipated for affected water or sewer supply corporations, investor-owned utilities, or ratepayers as a result of the administration or enforcement of the proposed rules. There are approximately 700 investor-owned utilities and 800 water or sewer service corporations in Texas.

HB 1358

The proposed rules provide that the commission has the same jurisdiction over nonprofit water or sewer supply corporations that it has over investor-owned water and sewer utilities if the commission finds that the water or sewer supply corporation is failing to operate or conduct business in a manner inconsistent with state laws or rules. It is assumed that water or sewer supply corporations will comply with state law and all other requirements and therefore no significant fiscal implications are anticipated. However, if the commission finds otherwise, and a water or sewer supply corporation does fall under the commission's jurisdiction, then any such utility wishing to file an application to change rates may be subject to additional legal costs if their application is protested. In addition, their rate change request may be denied.

SB 1063

The proposed rules would require all investor-owned utilities to operate under a single regulatory scheme with the exception of a single tariff system. This proposed change is expected to affect one investor-owned utility and would provide that for cases involving rate changes, the effective date for the proposed rate change must be at least 60 days after the application and notice are received and declared administratively complete by the commission or the date the notice is delivered to each ratepayer, whichever is later. Currently, the time frame is 30 days for the one utility. The proposed changes would lengthen the effective date of any rate change by 30 days thereby delaying any increase in revenues obtained from the rate change. The proposed rules also allow the same utility to continue collecting a universal rate while other utilities would be required to establish regional rates. These changes are not expected to result in significant fiscal implications for the utility.

Rate Case Expenses

The proposed rules would allow for the reduction or elimination of expenses paid to utilities for contested case hearing rate cases under certain conditions. Based upon previous years, the commission has two or three contested case rate hearings each year. Rate case expenses, including attorney and expert witness fees, are estimated to be between $30,000 and $70,000 for each case. Any future rate hearing expenses for utilities or cost savings for ratepayers would depend upon the outcome of the contested case rate hearings.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for investor-owned utilities or water or sewer supply corporations that are small or micro-businesses as a result of the proposed rulemaking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. According to Texas Government Code, §2001.0225(g)(3), a major environmental rule means "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." Here, the primary specific intent of the proposed rulemaking is to implement HB 1358, HB 2301, and SB 1063, of the 79th Legislature, 2005, and to draft rules regarding rate case expense in utility rate cases. In relevant part, HB 2301 deals with disallowance of unsupported costs in a rate application. HB 1358 deals with the commission's jurisdiction over certain water supply corporations (WSC) or sewer supply corporations. SB 1063 removes the exemption from certain requirements for rate change procedures for a public utility that provided service in only 24 counties on January 1, 2003.

These proposed changes are intended to impact only the economic and administrative regulation of water and sewer utilities. The proposed rules are not intended to have any impact on environmental regulation. Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The proposed rules: 1) are specifically required by state law, namely TWC, Chapter 13; 2) do not exceed the express requirements of the TWC; 3) do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. There is no federal delegation regarding water and sewer rates or regarding the state's ability to regulate WSCs; and 4) the proposed rules will not be adopted solely under the general powers of the commission.

Based on the foregoing, the proposed rulemaking does not constitute a major environmental rule, and thus is not subject to the regulatory analysis provisions of Texas Government Code, 2001.0225. The commission invites public comment on this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a takings pursuant to Texas Government Code, Chapter 2007. The intent of the proposed rulemaking is to implement HB 1358, HB 2301, and SB 1063, of the 79th Legislature, 2005, and to draft rules regarding rate case expense in utility rate cases. In relevant part, HB 2301 deals with disallowance of unsupported costs in a rate application. HB 1358 deals with the commission's jurisdiction over certain WSCs. SB 1063 removes the exemption from certain requirements for rate change procedures for a public utility that provided service in only 24 counties on January 1, 2003.

Promulgation and enforcement of these proposed rules will constitute neither a statutory nor a constitutional taking of private real property. The proposed procedures and regulations deal with the rate-making process, the recovery of rate case expense, and the regulation of WSCs. They do not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. There are no burdens imposed on private real property by the enactment of these rules. Therefore, the proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on May 4, 2006, at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Lola Brown at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-061-291-PR. Comments must be received by 5:00 p.m. on May 15, 2006. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Doug Holcomb, Utilities and Districts Section, at (512) 239-4691.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §291.8, §291.15

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.102, which provides the commission the general powers to carry out duties under the TWC; and TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041, states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13, or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041, also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The proposed rules implement TWC, §§5.102, 5.103, 13.041, 13.187, 13.004, 13.145(b), and §10.08(a), Chapter 966, Acts of the 77th Legislature, 2001.

§291.8. Administrative Completeness.

(a) (No change.)

(b) In cases involving proposed rate changes, the effective date of the proposed change must be at least 60 days [~~or 30 days for a utility that provided service in only 24 counties on January 1, 2003~~] after:

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

(c) (No change.)

§291.15. Notice of Wholesale Water Supply Contract.

(a) (No change.)

(b) The submission must include:

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

(9) a disclosure of any affiliated interest between the parties to the contract[~~, except that this requirement does not apply to a utility that provided service in only 24 counties on January 1, 2003~~]; and

(10) (No change.)

(c) (No change.)

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

Filed with the Office of the Secretary of State on March 31, 2006.

TRD-200601947
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 239-0348

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SUBCHAPTER B. RATES, RATE MAKING, AND RATES/TARIFF CHANGES

30 TAC §§291.21, 291.22, 291.24, 291.26, 291.28, 291.29, 291.31, 291.34, 291.35

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.102, which provides the commission the general powers to carry out duties under the TWC; and TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041, states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13, or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041, also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The proposed rules implement TWC, §§5.102, 5.103, 13.041, 13.187, 13.004, 13.145(b), and §10.08(a), Chapter 966, Acts of the 77th Legislature, 2001.

§291.21. Form and Filing of Tariffs.

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

(j) Tariffs filed by water supply or sewer service corporations. Every water supply or sewer service corporation shall file, for informational purposes only, one copy of its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff must include all rules and regulations relating to or affecting the rates, utility service or extension of service or product, or commodity furnished and shall specify the certificate of convenience and necessity [~~CCN~~] number and in which counties or cities it is effective.

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

(n) Regional rates. The [~~Except as otherwise provided in subsection (o) of this section, the~~] commission, where practicable, shall consolidate the rates by region for applications submitted with a consolidated tariff and rate design for more than one system.

(o) Exemption. Subsection [~~Subsections~~] (m) [~~and (n)~~] of this section does [~~do~~] not apply to a utility that provided service in only 24 counties on January 1, 2003. [~~,~~]

§291.22. Notice of Intent To Change Rates.

(a) Administrative requirements. In order to change rates, which are subject to the commission's original jurisdiction, the applicant utility shall file with the commission an original completed application for rate change with the number of copies specified in the application form and shall give notice of the proposed rate change by mail or hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. [~~A utility that provided service in only 24 counties on January 1, 2003 is required to provide the statement of intent to change rates at least 30 days prior to the proposed effective date. Paragraphs (3) and (4) of this subsection do not apply to a utility that provided service in only 24 counties on January 1, 2003.~~] Notice must be provided on the notice form included in the commission's rate application package and must contain the following information:

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

(b) (No change.)

(c) Notice delivery requirements. Notices may be mailed separately or may accompany customer billings. Notice of a proposed rate change by a utility must be mailed or hand delivered to the customers at least 60 days prior to the effective date of the rate increase. [~~A utility that provided service in only 24 counties on January 1, 2003 is required to provide the statement of intent to change rates at least 30 days prior to the proposed effective date.~~]

(d) Notice and statement of intent. The applicant utility shall mail or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 60 days prior to the effective date of the proposed change. [~~A utility that provided service in only 24 counties on January 1, 2003 is required to provide the statement of intent to change rates at least 30 days prior to the proposed effective date.~~] If the utility is requesting a rate change from the commission for customers residing outside the municipality, it shall also provide a copy of the rate application filed with the commission to the municipality. The commission may also require that notice be mailed or delivered to other affected persons or agencies.

(e) Proof of notice. Proof of notice in the form of an affidavit stating that proper notice was mailed to customers and affected municipalities and stating the dates of such mailing, shall be filed with the commission by the applicant utility as part of the rate change application. Notice to customers is sufficient if properly stamped and addressed to the customer and deposited in the United States mail at least 60 days before the effective date. [~~A utility that provided service in only 24 counties on January 1, 2003 is required to provide the statement of intent to change rates at least 30 days prior to the proposed effective date.~~]

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

§291.24. Jurisdiction over Affiliated Interests.

(a) (No change.)

(b) The [~~Except for a utility that provided service in only 24 counties on January 1, 2003, the~~] owner of a utility that supplies retail water service may not contract to purchase wholesale water service from an affiliated supplier for any part of that owner's systems unless:

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

§291.26. Suspension of Rates.

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

(c) If the commission receives the required number of protests that would require a contested case hearing, the commission may, pending the hearing and a final decision from the commission, suspend the date the rate change would be effective. The proposed rate may not be suspended for more than 150 days. [~~This provision does not apply to a utility that provided service in only 24 counties on January 1, 2003.~~]

§291.28. Action on Notice of Rate Change Pursuant to Texas Water Code, §13.187(b).

The commission may conduct a public hearing on any application.

(1) If, before the 91st day after the effective date of the rate change [~~or the 61st day for a utility serving in 24 counties on January 21, 2003~~], the commission receives a complaint from any affected municipality, or from the lesser of 1,000 or 10% of the ratepayers of the utility over whose rates the commission has original jurisdiction, or on its own motion, the commission shall set the matter for hearing. If after hearing, the commission finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the commission shall determine the rates to be charged by the utility and shall fix the rates by order.

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

(4) The executive director or commission may request additional information from any utility in the course of evaluating the rate/tariff change request, and the utility shall provide that information within 20 days of receipt of the request, unless a different time is agreed to. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the commission may disallow the unsupported costs or [~~nonsupported~~] expenses.

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

(7) A utility may recover rate case expenses, including attorney fees, incurred as a result of a rate change application only if the expenses are reasonable, necessary, and in the public interest.

(8) A utility may not recover any rate case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate.

(9) A utility may not recover any rate case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer.

§291.29. Interim Rates.

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

(c) At any time during the proceeding, the commission may, for good cause, require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate. [~~This provision does not apply to a utility that provided service in only 24 counties on January 1, 2003.~~]

(d) - (j) (No change.)

[~~(k) If the commission or judge establishes interim rates or an escrow account in a proceeding under Texas Water Code, §13.187 for a utility that provided service in only 24 counties on January 1, 2003, the commission shall make a final determination on the rates within 335 days after the effective date of the interim rates or escrowed rates~~]

~~or the rates are automatically approved as requested by the utility in its application.~~]

§291.31. Cost of Service.

(a) (No change.)

(b) Allowable expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted for known and measurable changes may be considered.

(1) (No change.)

(2) Expenses not allowed. The following expenses are not allowed as a component of cost of service:

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

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines; and

(J) the costs of purchasing groundwater from any source if:

(i) (No change.)

(ii) a wholesale supply of surface water is available. [~~; and~~]

[~~(K) subparagraph (J) of this paragraph does not apply to a utility that provided service in only 24 counties on January 1, 2003.~~]

(c) - (d) (No change.)

§291.34. Alternative Rate Methods.

(a) Alternative rate methods. To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the commission may utilize alternate methods of establishing rates. The commission shall assure that rates, operations, and service are just and reasonable to the consumers and to the utilities. The executive director may prescribe modified rate filing packages for these alternate methods of establishing rates. [~~The commission may not utilize an alternate method of establishing rates based upon whether the rate is more affordable for a utility that provided utility service in only 24 counties on January 1, 2003.~~]

(b) - (d) (No change.)

§291.35. Jurisdiction of Commission over Certain Water or Sewer Supply Corporations.

(a) Notwithstanding any other law, the commission has the same jurisdiction over a water supply or sewer service corporation that the commission has under this chapter over a water and sewer utility if the commission finds, after notice and opportunity for hearing, that the water supply or sewer service corporation:

(1) is failing to conduct annual or special meetings in compliance with Texas Water Code (TWC), §67.007; or

(2) is operating in a manner that does not comply with the requirements for classification as a nonprofit water supply or sewer service corporation prescribed by TWC, §13.002(11) and (24).

(b) The commission's jurisdiction provided by this section ends if:

(1) the water supply or sewer service corporation voluntarily converts to a special utility district operating under TWC, Chapter 65;

(2) the time period specified in the commission order expires; or

(3) the utility demonstrates that for the past 24 consecutive months it has conducted annual meetings as required by TWC, §67.007 and has operated in a manner that complies with the requirements for membership and nonprofit organizations as outlined in TWC, §13.002(11) and (24).

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 March 31, 2006.

TRD-200601948
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 239-0348

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SUBCHAPTER E. CUSTOMER SERVICE AND PROTECTION

30 TAC §291.81

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.102, which provides the commission the general powers to carry out duties under the TWC; and TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041, states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13, or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041, also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The proposed amendment implements TWC, §§5.102, 5.103, 13.041, 13.187, 13.004, 13.145(b), and §10.08(a), Chapter 966, Acts of the 77th Legislature, 2001.

§291.81. Customer Relations.

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

(d) Local office.

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

(3) Upon request by the utility, the requirement for a local office may be waived by the executive director if the utility can demonstrate that these requirements would cause a rate increase or otherwise harm or inconvenience customers.

[~~(4) Paragraphs (2) and (3) of this subsection do not apply to a utility that provided service in only 24 counties on January 1, 2003.~~] Unless otherwise authorized by the executive director in response to a written request, such utility shall make available and notify customers of a location within 20 miles of each of its utility service facilities where applications for service can be submitted and payments can be made to prevent disconnection of service or restore service after disconnection for nonpayment, nonuse, or other reasons specified in §291.88 of this title.

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 March 31, 2006.

TRD-200601949

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 14, 2006

For further information, please call: (512) 239-0348

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CHAPTER 293. WATER DISTRICTS

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§293.1, 293.11, 293.12, 293.20, 293.22, 293.23, 293.32, 293.41, 293.44, 293.51, 293.54, 293.69, 293.111 - 293.113, 293.201, and 293.202.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission has the statutory responsibility and authority to create, supervise, and dissolve certain water and water-related districts and to review the sale and issuance of bonds for district improvements in accordance with Texas Water Code (TWC), Chapters 12, 36, and 49 - 67. The commission oversees approximately 1,100 active water districts in Texas. Chapter 293 of the commission's rules governs the creation, supervision, and dissolution of all general and special law districts and the conversion of certain districts. Chapter 293 also governs the commission's review of bond applications by districts relating to engineering standards and economic feasibility of district construction project design and completion.

The proposed rulemaking would establish new or revise existing requirements relating to the administration of water districts and the commission's supervision over districts' actions under TWC, Chapters 36, 49, 51, 54, and 65. House Bill (HB) 828, 79th Legislature, 2005, amends TWC, §49.181 to exempt certain refunding bonds from having to obtain commission approval. HB 1208, 79th Legislature, 2005, amends provisions in TWC, Chapter 54 concerning a municipal utility district's (MUDs) eminent domain authority outside its boundaries. HB 1644, 79th Legislature, 2005, amends provisions in TWC, Chapter 51 (Water Control and Improvement Districts - WCIDs) and Chapter 54 (MUDs) to allow more flexibility in contracting and funding, and to place limitations on a municipality annexing such districts. HB 1673, 79th Legislature, 2005, amends provisions in TWC, Chapter 65, to allow specific purposes to be requested upon conversion to a special utility district (SUD). HB 1763, 79th Legislature, 2005, amends provisions in TWC, Chapter 36, concerning notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts (GCD), and to management planning and joint management planning requirements for GCDs. Senate Bill (SB) 693, 79th Legislature, 2005, amends provisions in TWC, Chapter 54, to place limitations on the filling of a vacancy on a district board. The proposed revisions amend and clarify commission rule language to conform with the statutory changes made to TWC, Chapters 36, 49, 51, 54, and 65, and to reflect staff-initiated changes for effective and consistent oversight of districts.

Specifically, the proposed rules would modify requirements that establish when a district is to obtain commission approval of refunding bonds; clarify allowable land costs to reflect limitations on a MUD's eminent domain authority outside its boundaries; add provisions allowing MUDs and WCIDs to contract with third parties for ownership and operation of facilities; add provisions allowing MUDs and WCIDs to fund certain certificate of convenience and necessity (CCN) costs; allow a water supply corporation to request only certain powers upon conversion to a SUD and require the commission to only grant powers requested; clarify GCD management plan adoption, submittal, and implementation requirements; modify joint GCD management planning requirements in groundwater management areas (GMAs) and compliance with joint planning provisions; clarify review panel recommendations and commission actions regarding GCDs; and clarify qualifications for directors of a MUD.

SECTION BY SECTION DISCUSSION

§293.1, Objective and Scope of Rules; Meaning of Certain Words

An amendment to §293.1(a) is proposed to correct an outdated rule reference to the TWC. This proposed rule change is consistent with TWC, §5.103.

§293.11, Information Required to Accompany Applications for Creation of Districts

An amendment to §293.11(h) is proposed to reflect that a water supply corporation's (WSCs) resolution requesting conversion to a SUD can reflect each purpose that a WSC wants the commission to grant upon conversion to a SUD. This proposed rule change is consistent with TWC, §65.021, as amended by HB 1673 and with TWC, §5.103.

§293.12, Creation Notice Actions and Requirements

An amendment to §293.12(c) is proposed to reflect that if the commission determines that a hearing is necessary it may only consider the purposes a WSC requests in its resolution requesting conversion to a SUD. This proposed rule change is consistent with TWC, §65.020 and §65.021, as amended by HB 1673.

§293.20, Records and Reporting

An amendment to §293.20(c) is proposed to provide the conforming three-year time frame for new GCDs to adopt and submit a management plan for consideration and approval by the executive administrator of the Texas Water Development Board (TWDB), and for GCDs to readopt and resubmit their readopted management plans to the executive administrator of the TWDB at least once every five years thereafter. The commission proposes to remove language referring to a "certified" management plan and replace it with "approved" management plan to conform with the new statutory language. No changes are proposed for subsections (a), (b), (d), or (e). This proposed rule change is consistent with TWC, §§36.1071 - 36.1073, and 36.302, as amended by HB 1763.

§293.22, Noncompliance Review and Commission Action

An amendment to §293.22 is proposed to make the conforming clarifications for instances when commission noncompliance review and action is required related to GCD management planning and joint GCD management planning in a GMA. In subsection (a), the proposed changes set out that the section is applicable if a GCD fails to: 1) submit a groundwater management plan to the executive administrator of the TWDB within three years of the date the GCD was created or the date the GCD was confirmed by election if an election was required; 2) achieve approval of a groundwater management plan, an amended plan, or a readopted plan from the executive administrator or the TWDB; 3) readopt and resubmit the management plan to the executive administrator of the TWDB at least once every five years after the date of management plan approval; 4) forward a copy of its approved groundwater management plan to the other GCDs included in a common GMA; 5) be actively engaged and operational in achieving the objectives of its groundwater management plan based on the State Auditor's Office review of the GCD's performance under its plan; or 6) adopt, implement, or enforce rules to protect groundwater as evidenced in a report prepared by peer review panel. No changes are proposed for subsections (b) - (e). In subsection (f), language is removed to conform with a statutory change clarifying GCD dissolution by the commission. No changes are proposed for subsections (g) - (i). This proposed rule change is consistent with TWC, §36.108 and §36.3011, as amended by HB 1763.

§293.23, Groundwater Conservation District Petition Requesting Inquiry in Groundwater Management Area

An amendment to §293.23 is proposed to rename the section and to make conforming clarifications. The commission proposes to rename the section "Petition Requesting Inquiry in Groundwater Management Area" and to make changes in subsection (a) to conform with the statutory change that authorizes both a person with a legally defined interest in groundwater in a GMA, and a GCD to petition the commission for an inquiry related to joint groundwater management planning. In subsection (b), the proposed changes clarify that an interested person or a GCD may file a petition to request a commission inquiry; that after September 1, 2010, a petitioner may request a commission inquiry if the petitioner believes the GMA process has not established the future desired conditions for the aquifers in the GMA; and documentation needed to support the petition. In subsection (c), the proposed changes add the word "groundwater" to references to the term "management area." No changes are proposed for subsections (d) or (e). This proposed rule change is consistent with TWC, §36.3011 and §36.304, as amended by HB 1763.

§293.32, Qualifications of Directors

An amendment to §293.32(a) is proposed to reflect additional qualifications to be a director of a MUD. This proposed rule change is consistent with TWC, §54.103, as added by SB 693.

§293.41, Approval of Projects and Issuance of Bonds

An amendment to §293.41(a) is proposed to reflect that refunding bonds issued to refund bonds originally approved by certain federal or state agencies no longer require commission approval. This proposed rule change is consistent with TWC, §49.181, as amended by HB 828.

§293.44, Special Considerations

An amendment to §293.44(b) is proposed to reflect that a district operating under TWC, Chapter 51 or Chapter 54, may contract with a third party for operation and maintenance of district facilities, obtain capacity or acquire facilities from another entity, and issue bonds or other obligations to fund CCN costs. This proposed rule change is consistent with TWC, §§49.218(a), 51.150, 51.402, 54.2351, 54.501, and 49.181, as amended by HB 1644.

§293.51, Land and Easement Acquisition

An amendment to §293.51(e) is proposed to reduce potential confusion by reflecting a MUD's restriction in the use of eminent domain powers outside of its boundaries. This proposed rule change is consistent with TWC, §54.209, as amended by HB 1208.

§293.54, Bond Anticipation Notes (BAN)

An amendment to §293.54(2), (9), (12), and (13), and adding §293.54(14) are proposed to tie the BAN rules under §293.54 in with the feasibility rules under §293.59. The proposed changes do not add new requirements to the bond application process; they require, when a bond application is filed and a BAN is issued, that construction and improvements be far enough along that a bond application can reasonably be processed within commission time frames. Experience in the last few years has shown that some districts file bond applications with the intent of issuing BANs; however, they are filed too soon and can't meet feasibility rules within commission processing times. This proposed rule change is consistent with TWC, §5.103.

§293.69, Purchase of Facilities

An amendment to §293.69 is proposed to reflect that a pre-purchase inspection is required even if facilities are conveyed to a third party, and that a pre-purchase inspection may not be required if a district's facilities are conveyed to a municipality and the municipality assumes all costs of operation and maintenance. This proposed rule change is consistent with TWC, §51.150 and §54.2351, as amended by HB 1644, and TWC, §5.103.

§293.111, Water and Wastewater Service Lines and Connections

An amendment to §293.111 is proposed by adding subsection (b) to clarify that §293.111 is applicable whether a district intends on operating facilities itself or intends on conveying facilities to a third party. This proposed rule change is consistent with TWC, §51.150 and §54.2351, as amended by HB 1644, and TWC, §5.103.

§293.112, Water, Wastewater and Drainage Facilities

An amendment to §293.112 is proposed by adding subsection (b) to clarify that §293.112 is applicable whether a district intends on operating facilities itself or intends on conveying facilities to a third party. This proposed rule change is consistent with TWC, §51.150 and §54.2351, as amended by HB 1644, and TWC, §5.103.

§293.113, District and Water Supply Corporations' Authority Over Wastewater Facilities

An amendment to §293.113 is proposed by adding subsection (c) to clarify that §293.113 is applicable whether a district intends on operating facilities itself or intends on conveying facilities to a third party. This proposed rule change is consistent with TWC, §51.150 and §54.2351, as amended by HB 1644, and TWC, §5.103.

§293.201, District Acquisition of Road Utility District Powers

An amendment to §293.201, including placing requirements under existing §293.202 in §293.201, is proposed to clarify application requirements for a district that wants to obtain road utility district powers. Staff have received calls from interested parties in the past two years requesting clarification on application requirements to obtain road utility district powers. This proposed rule change is consistent with TWC, §5.103.

§293.202, Application Requirements for Commission Approval

An amendment to §293.202 is proposed by adding requirements for a district that wants to issue bonds for road projects and would delete the existing language. The commission considers that it has the obligation to review and the authority to approve bonds for road projects when it has the authority to review utility bonds for a district. The primary intent of the proposed changes is to ensure consistency of review whether a district is issuing bonds for utilities or for road projects, and to ensure that bonds issued for roads are financially feasible. To a secondary degree, an engineering review of road projects is necessary to ensure that the road benefits the district and to insure consistency of review since utilities and roads are often included in a single project. This proposed rule change is consistent with TWC, §5.103.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed amendments are in effect, no significant fiscal implications are anticipated for the agency or any other unit of state or local government.

The proposed rules implement HBs 828, 1208, 1644, 1673, and 1763 and SB 693, 79th Legislature. The proposed rulemaking would revise or establish new requirements concerning the administration of water districts and the commission's supervision over districts' actions under TWC, Chapters 36, 49, 51, 54, and 65. The proposed rules also include staff-initiated changes regarding bond anticipation notes (BANs) and road utility districts (RUDs). These changes are proposed by staff to provide consistency with other rules and to reduce the number of deficient applications, clarify application requirements, and provide consistency in the financial review of district bond issues for roads, as well as provide consistency when a project includes road and utility costs.

The rulemaking applies mainly to general law districts established under TWC, Chapter 49. These districts are political subdivisions with an elected board of directors. There are approximately 1,000 active water districts throughout the State of Texas. The developers in those districts may also be subject to Chapter 293, which governs commission administration and oversight of districts. The rulemaking deals with the administration, management, operation, and authority of water districts, including requirements and/or exemptions from commission review of financial instruments such as bonds.

HB 828

In implementing HB 828, the proposed rulemaking amends §293.41 to provide that districts who issue refunding bonds to governmental entities such as the Texas Water Development Board, the Farmers Home Administration, the United States Department of Agriculture, or the North American Development Bank in order to refund bonds originally issued to that entity, no longer need to obtain commission approval of such a refunding issue.

HB 1541, 78th Legislature, 2003, required TCEQ approval for refunding bonds if the agency did not approve the original bonds. Under the proposed rules, it is anticipated that there will be one to two less bond issues per year reviewed by the Districts Review Team, which is less than 1% of the current workload. Districts are required to submit 0.25% of the bond proceeds and an application fee under §5.701(f) if a bond application is to be approved by TCEQ. There have been approximately two bond issues processed since the passage of HB 1541 generating $1,000 in application fees and an estimated $85,487 for the 0.25% bond proceeds fee. Any future loss of revenue is not expected to be significant.

HB 1208

The proposed rulemaking amends §293.51 to limit the circumstances under which a district may exercise its authority to exercise the power of eminent domain outside the district's boundaries. Before the passage of HB 1208, a municipal utility district was allowed to exercise the power of eminent domain to condemn private property outside of its boundaries. The proposed rules would prohibit a municipal utility district from exercising the power of eminent domain outside the district boundaries to: 1) acquire a site for certain water and recreational facilities; 2) build a trail on real property designated as a homestead; or 3) construct an exclusive easement through a county regional park. In general, the proposed amendments are not anticipated to result in fiscal implications for municipal utility districts, but would depend upon circumstances pertaining to each individual district.

HB 1644

The proposed rules implement HB 1644 by amending §293.44(b) to reflect that a district operating under TWC, Chapter 51 or Chapter 54, may: 1) contract with a third party for the operation and maintenance of district facilities; 2) obtain capacity or acquire facilities from another entity; and 3) issue bonds or other obligations to fund CCN costs. These proposed changes would provide Water Control and Improvement Districts and Municipal Utility Districts the authority to convey facilities to any other retail public utility and otherwise finance costs incurred by another retail public utility for the purpose of making service available in the districts. Authorization for districts to enter into contracts with other districts or to use bonds for any necessary purposes would provide greater flexibility in its use of resources, which could assist in reducing some costs.

HB 1673

In implementing HB 1673, an amendment is proposed to §293.12 to reflect that if a water supply corporation (WSC) applies for conversion to a special utility district (SUD), the commission may only consider the purposes a WSC requests in its resolution in determining whether a hearing is necessary. SUDs are created by converting an existing, non-profit water supply or sewer service corporation into a political subdivision under TWC, Chapter 65. WSCs must apply to the agency for authorization to convert to SUDs. The proposed amendment provides that if a water supply corporation applies for conversion to a special utility district, only those powers specified in its resolution may be considered in any contested hearing called by the state agency, and only those powers specified in that same resolution and application may be included in the agency's order creating the district. In general, these applications do not require contested case hearings under the Texas Administrative Procedure Act because protests have not been filed by customers or neighboring utilities. The proposed change may reduce any future contested case hearings by limiting the scope of a contested case hearing to only those powers specified in the resolution and application, but in general, the proposed changes are not anticipated to result in significant fiscal implications.

HB 1763

The implementation of HB 1763 is reflected in the proposed changes to §§293.20, 293.22, and 293.23. The proposed amendments make conforming changes related to deadlines for adoption of GCD management plans, make conforming clarifications for instances when commission noncompliance review and action is required related to GCD management planning, and make the conforming change to authorize both a person with a legally defined interest in groundwater in a GMA, and a GCD to petition the commission for an inquiry related to joint groundwater management planning. No fiscal implications are anticipated for the TCEQ or any other unit of state or local government due to the implementation of the proposed rules.

SB 693

An amendment to §293.32 is proposed to implement SB 693. The proposed change will reflect additional qualifications required in order to be director of a MUD. No fiscal implications are anticipated for the agency or any other unit of state or local government to implement the proposed change.

Staff Recommended Changes

The proposed rulemaking implements staff recommended changes in §§293.54, 293.201, and 293.202. Part of the proposed changes require that when a bond application is filed and Bond Application Notes are issued, construction and improvements must be far enough along that a bond application can reasonably be processed within established time frames. No additional costs are anticipated for applicants. Agency staff will be able to process applications under the feasibility rules more efficiently.

The proposed rules also clarify application requirements for districts that want to obtain road utility district powers. In response to this change, applicants may have to spend more time providing information, but this change is not expected to result in significant costs.

Lastly, the proposed amendments would require commission review and approval for districts that want to issue bonds for road projects. Districts are required to submit 0.25% of the bond proceeds and an application fee under §5.701(f), Texas Water Code if a bond application is to be approved by TCEQ. At this time, it is estimated that there will be approximately two bond applications each year. No significant increase in agency revenue or workload is anticipated at this time.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and increased flexibility for some utilities and water and road utility districts.

No significant fiscal implications are anticipated for businesses or individuals as a result of the proposed rulemaking. The rulemaking applies mainly to general law districts established under TWC, Chapter 49. These districts are political subdivisions with an elected board of directors. There are approximately 1,000 active water districts throughout the State of Texas. The developers in those districts may also be subject to Chapter 293, which governs commission administration and oversight of districts. The rulemaking deals with administration, management, operation, and authority of water districts, including requirements and/or exemptions from commission review of financial instruments such as bonds.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. The proposed rulemaking would revise or establish new requirements concerning the administration of water districts and the commission's supervision over districts' actions under TWC, Chapters 36, 49, 51, 54, and 65. The rulemaking applies mainly to general law districts established under TWC, Chapter 49, which are political subdivisions with an elected board of directors.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

REGULATORY IMPACT ANALYSIS

The commission has reviewed these proposed amendments to Chapter 293 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking project is not a "major environmental rule" as defined in the Texas Administrative Procedure Act and thus is not subject to the other provisions of §2001.0225. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. See Texas Government Code, §2001.0225(g)(3). Here, the proposed amendments do not meet those qualifications where the primary purposes of this rulemaking initiative are to clarify commission rule language in §§293.1 *et seq*. to conform with the statutory changes made to Texas Water Code, Chapter 5; to clarify rules regarding issuance of Bond Anticipation Notes associated with bond issuance applications and requirements to obtain road utility district powers from the commission; and to create and amend other rules in Chapter 293 to remain consistent with the statutory changes set forth in HBs 828, 1208, 1644, 1673, and 1763 and SB 693 of the 79th Legislature, 2005. As to these six enacted bills, this rulemaking initiative proposes to modify rules within Chapter 293 to accomplish the following: 1) exempting districts from obtaining commission approval to issue refunding bonds to refund bonds issued to and approved by the Farmer's Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development Board; 2) prohibiting a MUD other than one created by Chapter 1029, Acts of the 76th Legislature, 1999, from exercising eminent domain authority outside its boundary if the land is to be used for: a) a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant; b) a site for a park, swimming pool, or other recreational facility except a trail; c) a site for a trail on real property designated as a homestead as defined by §41.002; or d) an exclusive easement through a county regional park; 3) providing more flexibility to a WCID and MUD regarding contracting and funding, and placing limitations on a municipality that may annex these types of districts; 4) requiring applicants who seek to convert into a SUD to include a resolution specifying the purposes for the proposed conversion, if only specific purposes are desired, and then limiting the scope of the commission's review, including any hearings, of that application to those purposes contained in the resolution; 5) establishing the process for a GWD to adopt a management plan, which requires approval by the Texas Water Development Board, and outlining the procedures for how a GCD or a person with an interest in groundwater in a groundwater management area petitions the commission to inquire whether a GCD's management plan establishes reasonable future desired conditions for the aquifers in the groundwater management area; and 6) placing limitations on when a resigned board member can fill a vacancy on that same district board. While the commission has general jurisdiction over districts and authority to draft rules impacting districts, these changes to the operating processes of districts are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the proposed rulemaking project does not constitute a major environmental rule and is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The purposes of this proposed district rulemaking action are to keep the commission's rules consistent with the changes in Texas Water Code, Chapters 12, 36, and 49 - 67 made by the legislature in HBs 828, 1208, 1644, 1673, and 1763, and SB 693 of the 79th Legislature, 2005; clarify rules regarding the issuance of bond anticipation notes associated with bond issue applications and requirements to obtain road utility district powers; and amend a district rule to reflect a statutory change in Texas Water Code, Chapter 5. The proposed rules would substantially advance these stated purposes because these changes impact a district's ability to issue refunding bonds, issue bond anticipation notes, obtain road utility district powers, exercise its eminent domain powers, operate with a properly appointed board of directors, convert into a SUD, and enter into a contract for the sale and purchase of capacity in or facilities for water, sewer, drainage, or other services for a municipality, district, other political subdivision, or other utility provider. These proposed rules also substantially advance the creation of a procedure for a GCD to adopt management plans and a review process for the commission thereto.

Promulgation and enforcement of these proposed rules regarding the operations of districts would be neither a statutory nor a constitutional taking of private real property. The proposed regulations do not affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden, restrict, or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Updating commission rules to remain consistent with statutory changes to Texas Water Code, Chapter 5, and clarifying rules regarding bond anticipation notes and road utility district powers do not involve private real property rights. The statutory changes set forth in HBs 828, 1208, 1644, 1673, and 1763 and SB 693 of the 79th Legislature, 2005, also do not impact private real property rights. Specifically, private real property rights do not pertain to a district's ability to issue refunding bonds, appoint individuals to the board of directors, convert into a SUD, enter into a contract of sale with a municipality, district, other political subdivision, or other utility provider, or adopt groundwater management plans. In addition, while the issue of eminent domain may pertain to private real property rights, the proposed rule changes implementing HB 1208 do not impact these property rights where the rules reduce the circumstances when a district can exercise this power. Thus, these proposed rules do not impose a burden on private real property, but instead benefit society by providing by improving the process for districts to operate and for the commission to supervise, which should ultimately improve the quality of service that is provided to their customers. Therefore, the proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), concerning rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on May 11, 2006, at 10:00 a.m. at the Texas Commission on Environmental Quality in Building B, Room 201A, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-058-293-PR. Comments must be received no later than 5:00 p.m., May 15, 2006. For further information, please contact Randy Nelson, Utilities and Districts Section, at (512) 239-6160.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §293.1

STATUTORY AUTHORITY

The amendment is proposed under the authority of Texas Water Code, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendment implements Texas Water Code, §5.103, Rules.

§293.1. Objective and Scope of Rules; Meaning of Certain Words.

(a) The commission has the statutory duty and responsibility to create, supervise, and dissolve certain water and water related districts and to approve the issuance and sale of bonds for district improvements in accordance with the Texas Water Code (TWC). This chapter, adopted under TWC, §§5.103, 5.105, and 5.701 [~~5.235~~], shall govern the creation, supervision, and dissolution of all general and special law districts subject to and within the applicable limits of the jurisdiction of the commission.

(b) This chapter shall govern the conversion of districts into municipal utility districts as provided in TWC, §§54.030 - 54.036.

(c) The term "recreational facilities" means parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. The term includes associated street and security lighting.

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 March 31, 2006.

TRD-200601937
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Earliest possible date of adoption: May 14, 2006
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SUBCHAPTER B. CREATION OF WATER DISTRICTS

30 TAC §293.11, §293.12

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendments implement Texas Water Code, §5.103, Rules.

§293.11. Information Required to Accompany Applications for Creation of Districts.

(a) Creation applications for all types of districts, excluding groundwater conservation districts, shall contain the following:

(1) $700 nonrefundable application fee;

(2) if a proposed district's purpose is to supply fresh water for domestic or commercial use or to provide wastewater services, roadways, or drainage, a certified copy of the action of the governing body of any municipality in whose extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district, under Local Government Code, §42.042. If the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of Local Government Code, §42.042, have been followed;

(3) if city consent was obtained under paragraph (2) of this subsection, provide the following:

(A) evidence that the application conforms substantially to the city consent; provided, however, that nothing herein shall prevent the commission from creating a district with less land than included in the city consent;

(B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code (TWC), §54.016(e);

(4) a statement by the appropriate secretary or clerk that a copy of the petition for creation of the proposed district was received by any city in whose corporate limits any part of the proposed district is located;

(5) evidence of submitting a creation petition and report to the appropriate commission regional office;

(6) if substantial development is proposed, a market study and a developer's financial statement;

(7) if the petitioner is a corporation, trust, partnership, or joint venture, a certificate of corporate authorization to sign the petition, a certificate of the trustee's authorization to sign the petition, a copy of the partnership agreement or a copy of the joint venture agreement, as appropriate, to evidence that the person signing the petition is authorized to sign the petition on behalf of the corporation, trust, partnership, or joint venture;

(8) a vicinity map;

(9) unless waived by the executive director, for districts where substantial development is proposed, a certification by the petitioning landowners that those lienholders who signed the petition or a separate document consenting to the petition, or who were notified by certified mail, are the only persons holding liens on the land described in the petition;

(10) if the petitioner anticipates recreational facilities being an intended purpose, a detailed summary of the proposed recreational facility projects, projects' estimated costs, and proposed financing methods for the projects as part of the preliminary engineering report; and

(11) other related information as required by the executive director.

(b) Creation application requirements and procedures for TWC, Chapter 36, Groundwater Conservation Districts are provided in Subchapter C of this chapter (relating to Special Requirements for Groundwater Conservation Districts).

(c) Creation applications for TWC, Chapter 51, Water Control and Improvement Districts within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition as required by TWC, §51.013, requesting creation signed by the majority of persons holding title to land representing a total value of more than 50% of value of all land in the proposed district as indicated by tax rolls of the central appraisal district, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district;

(C) constitutional authority;

(D) purpose(s) of district;

(E) statement of the general nature of work and necessity and feasibility of project with reasonable detail; and

(F) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, will benefit all of the land and residents to be included in the district, and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §51.072;

(8) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title (relating to Application Requirements for Fire Department Plan Approval), except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(9) other information as required by the executive director.

(d) Creation applications for TWC, Chapter 54, Municipal Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §54.014 and §54.015, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by tax rolls of the central appraisal district. If there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district described by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(C) necessity for the work;

(D) statement of the general nature of work proposed; and

(E) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) a certified copy of the action of the governing body of any municipality in whose corporate limits or extraterritorial jurisdiction that the proposed district is located, consenting to the creation of the proposed district under TWC, §54.016. For districts to be located in the extraterritorial jurisdiction of any municipality, if the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of TWC, §54.016 have been followed;

(8) for districts proposed to be created within the corporate boundaries of a municipality, evidence that the city will rebate to the district an equitable portion of city taxes to be derived from the residents of the area proposed to be included in the district if such taxes are used by the city to finance elsewhere in the city services of the type the district proposes to provide. If like services are not to be provided, then an agreement regarding a rebate of city taxes is not necessary. Nothing in this subsection is intended to restrict the contracting authorization provided in Local Government Code, §402.014;

(9) affidavits by those persons desiring appointment by the commission as temporary directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary directors, in accordance with TWC, §49.052 and §54.102;

(10) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(11) other data and information as the executive director may require.

(e) Creation applications for TWC, Chapter 55, Water Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §55.040, signed by persons holding title to more than 50% of all land in the proposed district as indicated by county tax rolls, or by 50 qualified property taxpaying electors. The petition shall include the following:

(A) name of district; and

(B) area and boundaries of district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is practicable, would be a public utility, and would serve a beneficial purpose;

(5) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(7) other data and information as the executive director may require.

(f) Creation applications for TWC, Chapter 58, Irrigation Districts, within two or more counties, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §58.013 and §58.014, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries;

(C) provision of the Texas Constitution under which district will be organized;

(D) purpose(s) of district;

(E) statement of the general nature of the work to be done and the necessity, feasibility, and utility of the project, with reasonable detail; and

(F) statement of the estimated costs of the project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing as applicable the location of existing facilities including highways, roads, and other improvements, together with the location of proposed irrigation facilities, general drainage patterns, principal drainage ditches and structures, sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan, including a table showing irrigable and non-irrigable acreage;

(C) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(D) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(E) proposed budget including projected tax rate and/or fee schedule and rates;

(F) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(G) an evaluation of the effect the district and its systems will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(H) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(I) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land and residents to be included in the district and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §58.072; and

(8) other data as the executive director may require.

(g) Creation applications for TWC, Chapter 59, Regional Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition, as required by TWC, §59.003, signed by the owner or owners of 2,000 contiguous acres or more; or by the county commissioners court of one, or more than one, county; or by any city whose boundaries or extraterritorial jurisdiction the proposed district lies within; or by 20% of the municipal districts to be included in the district. The petition shall contain:

(A) a description of the boundaries by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(B) a statement of the general work, and necessity of the work;

(C) estimated costs of the work;

(D) name of the petitioner(s);

(E) name of the proposed district; and

(F) if submitted by at least 20% of the municipal districts to be included in the regional district, such petition shall also include:

(i) a description of the territory to be included in the proposed district; and

(ii) endorsing resolutions from all municipal districts to be included;

(2) evidence that a copy of the petition was filed with the city clerk in each city where the proposed district's boundaries cover in whole or part;

(3) if land in the corporate limits or extraterritorial jurisdiction of a city is proposed, documentation of city consent or documentation of having followed the process outlined in TWC, §59.006;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates; and

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(5) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, as required by TWC, §49.052 and §59.021;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(7) other information as the executive director may require.

(h) Creation applications for TWC, Chapter 65, Special Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a certified copy of the resolution requesting creation, as required by TWC, §65.014 and §65.015, signed by the president and secretary of the board of directors of the water supply or sewer service corporation, and stating that the corporation, acting through its board of directors, has found that it is necessary and desirable for the corporation to be converted into a district. The resolution shall include the following:

(A) a description of the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a licensed engineer;

(B) a statement regarding the general nature of the services presently performed and proposed to be provided, and the necessity for the services;

(C) name of the district;

(D) the names of not less than five and not more than 11 qualified persons to serve as the initial board; [~~and~~]

(E) a request specifying each purpose for which the proposed district is being created; and

(F) [~~(E)~~] if the proposed district also seeks approval of an impact fee, a request for approval of an impact fee and the amount of the requested fee;

(2) the legal description accompanying the resolution requesting conversion of a water supply or sewer service corporation, as defined in TWC, §65.001(10), to a special utility district that conforms to the legal description of the service area of the corporation as such service area appears in the certificate of public convenience and necessity held by the corporation. Any area of the corporation that overlaps another entity's certificate of convenience and necessity must be excluded unless the other entity consents in writing to the inclusion of its dually certified area in the district;

(3) a plat showing boundaries of the proposed district as described in the petition;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water or wastewater facilities;

(5) a preliminary engineering report including the following information unless previously provided to the commission:

(A) a description of existing area, conditions, topography, and any proposed improvements;

(B) existing and projected populations;

(C) for proposed system expansion:

(i) tentative itemized cost estimates of any proposed capital improvements and itemized cost summary for any anticipated bond issue requirement;

(ii) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(D) water and wastewater rates;

(E) projected water and wastewater rates;

(F) an evaluation of the effect the district and its system and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certified copy of a certificate of convenience and necessity held by the water supply or sewer service corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply or sewer service corporation;

(8) if requesting approval of an existing capital recovery fee or impact fee, supporting calculations and required documentation regarding such fee;

(9) certified copy of resolution and an order canvassing election results, adopted by the water supply or sewer service corporation, which shows:

(A) an affirmative vote of a majority of the membership to authorize conversion to a special utility district operating under TWC, Chapter 65; and

(B) a vote by the membership in accordance with the requirements of TWC, Chapter 67, and the Texas Non-Profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01 to 1396-11.01, to dissolve the water supply or sewer service corporation at such time as creation of the special utility district is approved by the commission and convey all the assets and debts of the corporation to the special utility district upon dissolution;

(10) affidavits by those persons named in the resolution for appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §65.102, where applicable;

(11) affidavits indicating that the transfer of the assets and the certificate of convenience and necessity has been properly noticed to the executive director and customers in accordance with §291.109 of this title (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction) and §291.112 of this title (relating to Transfer of Certificate of Convenience and Necessity);

(12) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(13) other information as the executive director requires.

(i) Creation applications for TWC, Chapter 66, Stormwater Control Districts, shall contain items listed in subsection (a) or this section and the following:

(1) a petition as required by TWC, §§66.014 - 66.016, requesting creation of a storm water control district signed by at least 50 persons who reside within the boundaries of the proposed district or signed by a majority of the members of the county commissioners court in each county or counties in which the district is proposed. The petition shall include the following:

(A) a boundary description by metes and bounds or lot and block number if there is a recorded map or plat and survey;

(B) a statement of the general nature of the work proposed and an estimated cost of the work proposed; and

(C) the proposed name of the district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary engineering report including:

(A) a description of the existing area, conditions, topography, and proposed improvements;

(B) preliminary itemized cost estimate for the proposed improvements and associated plans for financing such improvements;

(C) a listing of other entities capable of providing same or similar services and reasons why those are unable to provide such services;

(D) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(E) an evaluation of the effect the district and its projects will have on the following:

(i) land elevations;

(ii) subsidence/groundwater level and recharge;

(iii) natural run-off rates and drainage; and

(iv) water quality;

(F) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practical, necessary, and will benefit all the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §66.102, where applicable; and

(5) other data as the executive director may require.

(j) Creation applications for Local Government Code, Chapter 375, Municipal Management Districts in General, shall contain the items listed in subsection (a) of this section and the following:

(1) a petition requesting creation signed by owners of a majority of the assessed value of real property in the proposed district, or 50 persons who own property in the proposed district, if more than 50 people own real property in the proposed district. The petition shall include the following:

(A) a boundary description by metes and bounds, or lot and block number if there is a recorded map or plat and survey;

(B) purpose(s) for which district is being created;

(C) general nature of the work, projects or services proposed to be provided, the necessity for those services, and an estimate of the costs associated with such;

(D) name of proposed district, which must be generally descriptive of the location of the district, followed by "Management District";

(E) list of proposed initial directors and experience and term of each; and

(F) a resolution of municipality in support of creation, if inside a city;

(2) a preliminary plan or report providing sufficient details on the purpose and projects of district as allowed in Local Government Code, Chapter 375, including budget, statement of expenses, revenues, and sources of such revenues;

(3) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for initial directors, in accordance with Local Government Code, §375.063; and

(5) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee.

§293.12. Creation Notice Actions and Requirements.

(a) On receipt by the executive director of all required documentation associated with an application for creation of a district by the commission in accordance with Texas Water Code (TWC), Chapter 51, multi-county Water Control & Improvement Districts or single county Water Control and Improvement Districts requesting additional powers; Chapter 54, Municipal Utility Districts; Chapter 55, Water Improvement Districts; Chapter 58, multi-county Irrigation Districts; Chapter 59, Regional Districts; Chapter 65, Special Utility Districts; and Chapter 66, Storm Water Control Districts, the executive director shall notify the chief clerk that the application is administratively complete.

(b) For those applications described in subsection (a) of this section, the chief clerk shall send a copy of a notice to the applicant indicating that an application has been received and notifying interested persons of the procedures for requesting a public hearing. The applicant shall cause the notice to be published as follows:

(1) notice must be published once a week for two consecutive weeks in a newspaper regularly published or circulated in the county or counties where the district is proposed to be located with the last publication not later than the 30th day before the date on which the commission may act on the application, and

(2) not later than the 30th day before the date on which the commission may act on the application, the notice must be posted on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located.

(c) For those applications described in subsection (a) of this section, the commission may act on an application without holding a public hearing if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following the final publication of notice under this section. <u>In addition, the following shall apply.</u>

<u>(1)</u> If the commission determines that a public hearing is necessary, the chief clerk shall advise all parties of the time and place of the hearing. The commission is not required to provide public notice of a hearing under this subsection.

<u>(2) Regardless of whether a public hearing is held or not, for an application for creation of a special utility district in accordance with TWC, Chapter 65, the commission may only consider a purpose for which the district is being created that is specified in the resolution.</u>

(d) For a petition for the creation of a Special Utility District in accordance with TWC, Chapter 65, which includes transfer of the certificate of convenience and necessity, the applicant shall also, unless waived by executive director, mail copies of the notice to customers of the water supply corporation and other affected parties at least 120 days prior to approval. Such notice shall include the following:

(1) name and business address of the district;

(2) a description of the service area involved;

(3) the anticipated effect of the conversion on the operation or the rates and services provided to customers; and

(4) a statement that if a hearing is granted, persons may attend the hearing and participate in the process.

(e) If a petition for the creation of a Special Utility District in accordance with TWC, Chapter 65, contains a request for approval of an impact fee, the applicant shall comply with the notice provisions of §293.173 of this title (relating to Impact Fee Notice Actions and Requirements).

(f) The hearing action and notice requirements for Local Government Code, Chapter 375, Municipal Management Districts are as follows.

(1) The chief clerk shall send a copy of the notice of hearing to all counties in which the proposed district is located and all municipalities which have extraterritorial jurisdiction in the county or counties in which the proposed district is located and which have formally requested notice of creation of all districts in their county or counties. The chief clerk shall prepare a certificate indicating that notice was properly mailed to any such counties and/or municipalities.

(2) The chief clerk shall send a copy of the notice of hearing to the petitioners, or their agents, who shall:

(A) cause the notice to be published in a newspaper with general circulation in the municipality in which the proposed district is located once a week for two consecutive weeks with the first publication being at least 31 days prior to the date of the commission hearing;

(B) send the notice of the hearing by certified mail, return receipt requested, to all property owners within the district at least 30 days before the hearing.

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 March 31, 2006.

TRD-200601938
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 239-6087

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SUBCHAPTER C. SPECIAL REQUIREMENTS FOR GROUNDWATER CONSERVATION DISTRICTS

30 TAC §§293.20, 293.22, 293.23

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendments implement Texas Water Code, §5.103, Rules.

§293.20. Records and Reporting.

(a) Each groundwater conservation district created according to Texas Water Code (TWC), Chapter 36 shall comply with the statute. Districts created by special acts of the Texas Legislature must comply with all statutory requirements contained in the special act and with the provisions of TWC, Chapter 36 that do not conflict with the special act.

(b) Districts are required to submit to the executive director the following documents:

(1) a certified copy of the legislative act creating the district within 60 days after the district is created;

(2) a certified copy of the order of the district's board of directors canvassing the confirmation election and declaring the confirmation election results according to TWC, §36.017(e);

(3) a certified copy of the order of the district's board of directors changing the boundaries of the district, a metes and bounds description of the boundary change, and a detailed map showing the boundary change within 60 days after the date of any boundary change; and

(4) a written notification to the executive director of the name, mailing address, and date of expiration of term of office of any elected or appointed director within 30 days after the date of the election or appointment according to TWC, §36.054(e).

(c) Each district is required under TWC, §36.1071 to adopt a comprehensive management plan and adopt rules that are necessary to implement the management plan. In accordance with TWC, §36.1072, the [~~The~~] management plan must be adopted by the district and submitted to the executive administrator of the Texas Water Development Board within three [~~two~~] years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required [~~and certified by the executive administrator of the Texas Water Development Board~~]. The management plan is subject to approval by the executive administrator of the Texas Water Development Board or the Texas Water Development Board upon appeal. After approval, each district must readopt and resubmit the management plan to the executive administrator of the Texas Water Development Board at least once every five years.

(1) Each district must forward a copy of its approved [~~certified~~] groundwater management plan to the regional water planning group for the planning region in which the district is located and provide confirmation to the executive director that such action has been taken.

(2) Each district must forward a copy of its approved [~~certified~~] groundwater management plan to the other districts that are included with the district in a common groundwater management area and provide confirmation to the executive director that such action has been taken.

(3) Each district must provide a copy of an existing, new, or amended approved [~~certified~~] groundwater management plan to the executive director.

(d) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions related to noncompliance review under TWC, Chapter 36, Subchapter I and §293.22 of this title (relating to Noncompliance Review and Commission Action).

(e) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions.

§293.22. Noncompliance Review and Commission Action.

(a) Purpose. The purpose of this section is to set out procedures for commission review of groundwater conservation district (GCD) noncompliance with requirements of Texas Water Code (TWC), Chapter 36. This section provides a process for a GCD to achieve compliance, enforcement procedures if compliance is not achieved, and commission enforcement actions. A groundwater management plan noncompliance review and commission action are required under TWC as the result of a GCD's failure to:

(1) adopt a groundwater management plan in accordance with TWC, §36.1071 and §36.1072 and submit the plan to the executive administrator of the Texas Water Development Board within three [~~two~~] years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required;

(2) achieve approval [~~certification~~] of a groundwater management plan, an amended [~~or amendment of a~~] groundwater management plan, or a readopted groundwater management plan from [~~with~~] the executive administrator or the Texas Water Development Board as provided by TWC, §36.1072 and §36.1073;

(3) readopt and resubmit the management plan to the executive administrator of the Texas Water Development Board at least once every five years after the date of management plan approval;

(4) [~~(3)~~] forward a copy of its approved [~~certified~~] groundwater management plan to the other GCDs that are included with the district in a common groundwater management area (GMA);

(5) [~~(4)~~] be actively engaged and operational in achieving the objectives of its groundwater management plan based on the State Auditor's Office review [~~audit~~] of the district's performance as provided by TWC, §36.302; or

(6) [~~(5)~~] adopt, implement, or enforce district rules to protect groundwater as evidenced in a report prepared by a commission-appointed review panel as provided by TWC, §36.108 and §293.23 of this title (relating to [~~Groundwater Conservation District~~] Petition Requesting Inquiry in Groundwater Management Area).

(b) Noncompliance review. The executive director shall investigate the facts and circumstances of any violations of this chapter or order of the commission under this chapter or provisions of TWC, §§36.301, 36.3011, and 36.302.

(1) The executive director may attempt to resolve any noncompliance set out in subsection (a) of this section with the district. After review of the facts and identification of noncompliance issues, the executive director may propose to resolve the issue with the district through a compliance agreement. The compliance agreement must clearly identify the noncompliance issue(s) and provide district actions and a schedule for the district to achieve compliance.

(2) If the executive director proposes a compliance agreement, the district shall be provided a specified time frame not to exceed 60 days after the date of receipt of the compliance agreement, to consider and agree to the terms of the compliance agreement and schedule. If the district wants to negotiate the compliance agreement, it must contact the executive director within ten days of receipt of the compliance agreement so that the final compliance agreement can be considered by the district and its board of directors within the 60-day time frame.

(3) If the district agrees with and signs the compliance agreement, the executive director shall monitor the district's implementation of agreement provisions within the agreed schedule. If the district accomplishes compliance within the agreed schedule, the executive director shall notify the district that it has achieved compliance and is no longer under review by the commission.

(c) Executive director recommendations filed with commission. If unable to resolve the violation under subsection (b) of this section, or if the facts of the noncompliance issue warrant, the executive director shall follow the procedures for commission enforcement actions set out in Chapter 70, Subchapter C of this title (relating to Enforcement). The executive director shall prepare and file a written report with the commission and the district and include any actions the executive director believes the commission should take under TWC, §36.303 and subsection (e) of this section.

(d) Notice and hearing. The commission shall provide notice in accordance with §70.104 of this title (relating to Executive Director's Preliminary Report). If the executive director's report recommends dissolution of a district or of a board of directors or the placement of a district into receivership, the commission shall hold an enforcement hearing.

(1) The commission shall publish notice once each week for two consecutive weeks before the day of the hearing to receive evidence on the dissolution of a district or of a board of directors or the placement of a district into receivership in a newspaper of general circulation in the area in which the district is located with the first publication being 30 days before the day of hearing.

(2) The commission shall give notice of the hearing by first-class mail addressed to the directors of the district according to the last record on file with the executive director.

(e) Commission enforcement actions. In accordance with TWC, §§36.108, 36.301, and 36.302, the commission, after notice and hearing, shall take all actions it considers appropriate, including:

(1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;

(2) dissolving the board in accordance with TWC, §36.305 and §36.307 and calling an election for the purpose of electing a new board;

(3) requesting the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of the GCD in accordance with TWC, §36.3035;

(4) dissolving the district in accordance with TWC, §§36.304, 36.305, and 36.308; or

(5) recommending to the legislature in the commission's report concerning priority groundwater management areas required by TWC, §35.018, actions the commission deems necessary to accomplish comprehensive management in the district.

(f) District dissolution. TWC, §§36.304 - 36.310 authorize the commission to dissolve any district as defined in TWC, §36.001(1), that [~~is not operational as determined under TWC, §36.302 and~~] has no outstanding bonded indebtedness.

(1) A district that is composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved. If a district is in more than one county, and has outstanding bond indebtedness, it may not be dissolved.

(2) Upon the dissolution of a district by the commission, all assets of the district shall be sold at public auction and the proceeds given to the county if it is a single county district. If it is a multi-county district, the proceeds shall be divided with the counties in proportion to the surface land area in each county served by the district.

(3) The commission shall file a certified copy of an order for the dissolution of a GCD in the deed records of the county or counties in which the district is located. If the district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the Secretary of State.

(g) Dissolution of board. If the commission enters an order to dissolve the board of a GCD, the commission shall notify the county commissioners court of each county which contains territory in the district. The commission shall appoint five temporary directors under TWC, §36.016, that shall serve until an election for a new board can be held under TWC, §36.017. However, district confirmation shall not be required for continued existence of the district and shall not be an issue in the election.

(h) Receivership. If the commission enters an order to request the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of a district, the executive director shall forward the order and the request to the attorney general and provide any relevant commission correspondence. The executive director shall assist the attorney general as requested and shall continue to track the status of attorney general actions.

(i) Appeals. Appeals from any commission order issued under this section shall be filed and heard in the district court of any of the counties in which the district is located.

§293.23. [~~Groundwater Conservation District~~] Petition Requesting Inquiry in Groundwater Management Area.

(a) Purpose and applicability. This section provides procedures for commission review of a petition filed by a groundwater conservation district (GCD) or a person with a legally defined interest in groundwater in a groundwater management area (GMA) requesting [~~petitions that request~~] an inquiry related to joint groundwater management planning in a GMA [~~groundwater management area (GMA)~~]; commission appointment of the review panel; review panel actions; and executive director actions under Texas Water Code (TWC), §36.108 and 36.3011. Such petitions must be [~~for good cause and~~] filed following the procedures prescribed by this section.

(b) Petition requesting commission inquiry. A GCD or an interested person [~~with good cause~~] may file a petition with the executive director to request a commission inquiry if a [~~the~~] district [~~adopts a resolution calling for joint planning in a GMA and the other district~~] or districts refused to join in the GMA planning process or the GMA planning process failed to result in adequate planning. After September 1, 2010, a GCD or an interested person may file a petition with the executive director to request a commission inquiry if the GMA planning process does not establish reasonable future desired conditions for the aquifers in the GMA.

(1) The petition must include documentation that demonstrates that joint planning meetings have been conducted by the presiding officers, or their designees, of each district located in whole or in part [~~was requested~~] in the GMA [~~by district resolution~~]. Documentation shall include:

(A) a certified copy of the board resolutions [~~resolution~~] calling for the joint planning between the districts in the GMA;

(B) evidence that joint planning meeting notice [~~the resolution~~] was received by the [~~other district or~~] districts in the GMA such as a return receipt for certified mail service;

(C) publishers' affidavits of joint planning meeting notice [~~if joint meetings were called~~]; and

(D) copies of joint planning meeting minutes and accepted handouts certified by the districts that attended the meetings [~~if such meetings were held~~].

(2) The petition must include a certified statement from the petitioning district's board of directors or from the interested person that describes why the petitioner [~~district~~] believes that adequate planning was not achieved in the GMA.

(3) The petition must provide evidence that:

(A) a [~~another~~] district in the groundwater management area has failed to adopt rules;

(B) the rules adopted by a district are not designed to achieve the desired future condition of the groundwater resources in the GMA established during the joint planning process;

(C) [~~(B)~~] the groundwater in the management area is not adequately protected by the rules adopted by a [~~another~~] district; or

(D) [~~(C)~~] the groundwater in the management area is not adequately protected due to the failure of a [~~another~~] district to enforce substantial compliance with its rules.

[~~(4) The district has shown "good cause" if this subsection is satisfied.~~]

(c) Commission review of petition. The commission shall review the petition not later than 90 days after the date the petition was filed. The commission may dismiss the petition if it finds that the evidence is not sufficient to show that the items contained in subsection (b)(1), (2), or (3) of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report.

(1) The review panel shall consist of five members.

(A) The commission shall appoint one of the members to serve as the chairman of the review panel. The chairman shall schedule and preside over the proceedings and meetings of the panel.

(B) A director or general manager of a district located outside the groundwater management area that is the subject of the petition may be appointed to the review panel.

(C) The commission may not appoint more than two members of the review panel from any one district.

(2) The commission shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the review panel.

(3) The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition.

(4) According to TWC, §36.108, the review panel shall review the petition and any evidence relevant to the petition and consider and adopt a report to the commission.

(d) Review panel report. The review panel's report must be submitted to the executive director no later than 120 days after the review panel was appointed by the commission. The review panel's report shall include:

(1) if a public hearing is conducted, a summary of evidence taken on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take under TWC, §36.303 and §293.22(e) of this title (relating to Noncompliance Review and Commission Action) and the reasons it finds those commission actions appropriate; and

(3) any other information the panel considers appropriate for commission consideration.

(e) Commission action on review panel report. The executive director or the commission shall take action to implement any or all of the review panel's recommendations if the items contained in subsection (b)(1) - (4) of this section apply. The executive director shall, no later than 45 days after the date the review panel report was received, recommend to the commission or initiate any action considered necessary under TWC, §36.303 and §293.22(b) - (e) of this title.

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 March 31, 2006.

TRD-200601939
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Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 239-6087

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SUBCHAPTER D. APPOINTMENT OF DIRECTORS

30 TAC §293.32

STATUTORY AUTHORITY

The amendment is proposed under the authority of Texas Water Code, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendment implements Texas Water Code, §5.103, Rules.

§293.32. Qualifications of Directors.

(a) Unless otherwise provided, an applicant for appointment as a director must be at least 18 years old, a resident citizen of Texas, and either own land subject to taxation in the district or be a qualified voter within the district.

(1) A director of a fresh water supply district created under Texas Water Code, Chapter 53 must be a registered voter of the district but need not own land subject to taxation in the district.

(2) A director of a regional district created for the purposes defined under Texas Water Code, §59.004 must be at least 18 years old and a resident of this state, but need not be a landowner or qualified voter within the district.

(3) A director of a special utility district created for the purposes defined under Texas Water Code, §65.012, must be a resident citizen of this state and either own land subject to taxation in the district, or be a user of the facilities of the district or be a qualified voter in the district.

(4) A director of a stormwater control district created for the purposes defined under Texas Water Code, §66.012, must reside within the boundaries of the proposed district but need not be a landowner or qualified voter within the district.

(5) A director of a groundwater conservation district must be a registered voter in the precinct that the person represents pursuant to Texas Water Code, §36.059(b).

(6) A director who resigned from the board of directors of a municipal utility district, under Texas Water Code, Chapter 54, cannot be re-appointed to fill a vacancy on that same board if the person:

(A) resigned from the board:

(i) within two years preceding the vacancy date; or

(ii) on or after the vacancy date but before the vacancy is filled; or

(B) was defeated in a directors election held by the district in the two years preceding the vacancy date.

(7) [~~(6)~~] A director shall not be a developer of property in the district, or be related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district, or other person providing professional services to the district.

(8) [~~(7)~~] A director shall not be an employee of any developer of property in the district, or any director, manager, engineer, attorney, or other person providing professional services to the district, or a developer of property in the district in connection with the district or property located in the district.

(b) As used in this section, a developer of property in the district means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto. (See Texas Water Code, §49.052(d).)

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 March 31, 2006.

TRD-200601940

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Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 239-6087

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SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §§293.41, 293.44, 293.51, 293.54

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendments implement Texas Water Code, §5.103, Rules.

§293.41. Approval of Projects and Issuance of Bonds.

(a) Bonds, as referred to in this subchapter, include any bonds authorized to be issued by the Texas Water Code (TWC) or special statute, and are represented by an instrument issued in bearer or registered form. This section does not apply to:

(1) refunding bonds, if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities; [~~or~~]

(3) bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development Board, or successor agencies; or [~~.~~]

(4) refunding bonds issued to refund bonds described by paragraph (3) of this subsection.

(b) This subchapter does apply to revenue notes to the extent described in §293.80(d) of this title (relating to Revenue Notes) and contract tax obligations to the extent described in §293.89 of this title (relating to Contract Tax Obligations).

(c) The commission has the statutory responsibility to approve projects relating to the issuance and sale of bonds for districts as defined in TWC, §49.001(1), and other districts where specifically required by law.

(d) This subchapter does not apply to a district if:

(1) the boundaries include one entire county;

(2) the district was created by a special act of the legislature; and

(A) the district is located entirely within one county and entirely within one or more home-rule municipalities;

(B) the total taxable value of the real property and improvements to the real property, zoned by one or more home-rule municipalities for residential purposes and located within the district, does not exceed 25% of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(C) the district was not required by law to obtain commission approval of its bonds before September 1, 1995;

(3) the district is a special water authority as defined by TWC, §49.001(8);

(4) the district is governed by a board of directors appointed in whole or part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide, or propose to provide, water, wastewater, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function; or

(5) the district:

(A) is a municipal utility district operating under TWC, Chapter 54, that includes territory in only two counties;

(B) has outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities; and

(C) has at least 5,000 active water connections.

(e) A district located within Bastrop, Bexar, Brazoria, Fort Bend, Galveston, Harris, Travis, Waller, or Williamson Counties may submit bond applications, which include recreational facilities that are supported by taxes, in accordance with TWC, §49.4645.

(1) Bond applications submitted under this subsection must include a copy of a district's park plan as required under TWC, §49.4645(b), in addition to other application requirements under §293.43 of this title (relating to Application Requirements). The park plan is to be signed and sealed by a registered landscape architect, a registered professional engineer, or any other design professional allowed by law to engage in landscape architecture.

(2) Bond applications submitted under this subsection may include:

(A) forests, greenbelts, open spaces, and native habitat;

(B) sidewalks, trails, paths, boardwalks, and fitness trail equipment, subject to the following restrictions:

(i) the sidewalks, trails, paths, boardwalks, and fitness trail equipment unrelated to golf courses;

(ii) the sidewalks, trails, paths, boardwalks, and fitness trail equipment located outside of the right-of-way required by applicable government agencies for streets, unless a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district; and

(iii) if a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district prior to the annexation of land, the location restriction in clause (ii) of this subparagraph only applies to annexed land;

(C) pedestrian bridges and underpasses that are less than 200 feet in length and not related to golf courses;

(D) outdoor ballfields, including, but not limited to, soccer, football, baseball, softball, and lacrosse, outdoor skate/roller blade facilities, associated scoreboards, and bleachers designed for less than 500 people per field or per skate/roller blade facility;

(E) parks (outdoor playground facilities and associated ground surface material, picnic tables, benches, barbeque grills, fire pits, fireplaces, trash receptacles, drinking water fountains, open-air pavilions/gazebos, open-air amphitheaters/assembly facilities designed for less than 500 people, open-air shade structures, restrooms and changing rooms, concession stands, water playgrounds, recreational equipment storage facilities, and emergency call boxes);

(F) amenity lakes, and associated water features, docks, piers, overlooks, and non-motorized boat launches subject to §293.44(a)(24) of this title (relating to Special Considerations);

(G) amenity/recreation centers, outdoor tennis courts, and outdoor basketball courts if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district;

(H) fences no higher than eight feet that are located within public right-of-way or district sites/easements and are along streets if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district; and

(I) landscaping (including, but not limited to, trees, shrubs, and berms) and associated irrigation, fences, information signs/kiosks, lighting (except street lighting), and parking related to items listed in subparagraphs (A) through (G) of this paragraph.

(3) Bond applications submitted under this subsection shall not include:

(A) indoor or outdoor swimming pools, pool decks, and associated equipment or storage facilities;

(B) golf courses, clubhouses, and related structures or facilities;

(C) air conditioned buildings, gymnasiums, spas, fitness centers, and habitable structures, except as allowed in paragraph (2) of this subsection;

(D) sound barrier walls;

(E) retaining walls used for roadway purposes;

(F) fences, such as for subdivisions and lots, which are not related to district facilities, except as allowed in paragraph (2) of this subsection;

(G) signs and monuments, such as for subdivisions and developments, which are not related to district facilities; and

(H) street lighting.

(4) A district's outstanding principal debt (bonds, notes, and other obligations), payable from any source, for recreational facilities must not exceed 1% of the taxable value of property in the district, as supported by a certificate from the central appraisal district, at the time of issuance of the debt or exceed the estimated cost provided in the park plan required under TWC, §49.4645(b), whichever is smaller.

(5) A district may submit a bond application that proposes to fund recreational facilities only after or at the same time a district has funded water, wastewater, and/or drainage facilities, depending on a district's authorized functions, to serve the section that includes the recreational facilities or to serve areas along roads that are either adjacent to the recreational facilities or are necessary to provide access to the recreational facilities.

(6) Plans and specifications for recreational facilities must be signed and sealed by a registered landscape architect, a registered professional engineer, or any other design professional allowed by law to engage in landscape architecture.

§293.44. Special Considerations.

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project that provides water, wastewater, drainage, or recreational facility service for property owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted under paragraph (8) of this subsection, the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities' easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations for clearing and grubbing contracts let and awarded in the developer's name shall not apply when the amount of the estimated district share, including any required developer contribution does not exceed 50% of the total construction contract costs.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district, unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, sewer, or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity that provides adequate payment to the district to pay the cost of financing, operating, and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation, and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user; and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights.

(9) Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(11) Land planning, zoning, and development planning costs should not be paid by the district, except for conceptual land-use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not typically be paid by the district; however, the costs for the portion of an amenity lake considered a recreational facility under paragraph (24) of this subsection may be funded by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off site for another eligible project.

(13) Bridge and culvert crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district, unless such crossing consists of one or more culverts with a combined cross-sectional area of not more than nine square feet. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Districts may fund the costs of bridge and culvert crossings needed to accommodate the development's road system that are larger than those specified in subparagraph (A) of this paragraph, which cross channels other than natural waterways with defined bed and banks and are necessary as a result of required channel improvements subject to the following limitations:

(i) the drainage channel construction or renovation must benefit property within the district's boundaries;

(ii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing; and

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic-carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, notwithstanding that other acceptable or less costly engineering alternatives may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursables and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district; or

(D) provided, however, that the limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows.

(A) Such costs were incurred or projected to incur during creation, and/or construction periods which include periods during which the district is constructing its facilities or there is construction by third parties of aboveground improvements within the district.

(B) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, expenses for a prior time period are no longer eligible. Payment of expenses during construction periods is limited to five years in any single bond issue.

(C) Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five-year period for which application is made in accordance with this subsection.

(D) The district may pay interest on the advances under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable, customary, and necessary for district creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection, and other matters not directly related to the district's water, sewage, and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer that compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with flood plain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(22) The district may finance those costs associated with endangered species permits. Such costs shall be shared between the district and the developer with the district's share not to exceed 70% of the total costs, unless unusual circumstances are present as determined by the commission. The district's share shall not be subject to the developer's 30% contribution under §293.47 of this title. For purposes of this subsection, "endangered species permit" means a permit or other authorization issued under §7 or §10(a) of the federal Endangered Species Act of 1973, 16 United States Code, §1536 and §1539(a).

(23) The district may finance 100% of those costs associated with federal storm water permits. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. For purposes of this subsection, "federal storm water permit" means a permit for storm water discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by the United States Environmental Protection Agency and Texas Pollutant Discharge Elimination System permits issued by the commission.

(24) The district may finance the portion of an amenity lake project that is considered a recreational facility.

(A) The portion considered a recreational facility must be accessible to all persons within the district and is determined as:

(i) the percentage of shoreline with at least a 30-foot wide buffer between the shoreline and private property; or

(ii) the percentage of the perimeter of a high bank of a combination detention facility and lake with at least a 30-foot wide buffer between the high bank and private property.

(B) The district's share of costs for the portion of an amenity lake project that is considered a recreational facility is not subject to the developer's 30% contribution under §293.47 of this title.

(C) The authority for districts to fund recreational amenity lake costs in accordance with this paragraph does not apply retroactively to projects included in bond issues submitted to the commission prior to the effective date of this paragraph.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district, or if constructed by a developer in contemplation of resale to the district and the cost of the facilities is not available after demonstrating a good faith effort to locate the cost records should be established by an independent appraisal by a registered professional engineer hired by the district. The appraised value should reflect the cost of replacement of the facility, less repairs and depreciation, taking into account the age and useful life of the facility and economic and functional obsolescence as evidenced by an on-site inspection.

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, sewer, or drainage, under contracts authorized under Local Government Code, §402.014, or other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, sewer, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(3) When a district proposes to obtain capacity in or acquire facilities for water, [~~or~~] sewer, drainage, or other service from a municipality, district, or other political subdivision, or other utility provider, and proposes to use bond proceeds to compensate the providing entity [~~political subdivision~~] for the water, [~~or~~] sewer, drainage, or other services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or [~~providing~~] the providing entity has adopted a uniform service plan for such water, [~~and~~] sewer, drainage, and other services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract that will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions that could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) and as detailed in §293.41(e)(2) of this title (relating to Approval of Projects and Issuance of Bonds) for all affected districts that benefit and are available to all persons within the district. A district's financing, whether from tax-supported or revenue debt, of costs associated with recreational facilities is subject to §293.41(e)(1) - (6) of this title and is not subject to the developer's 30% contribution as may be required by §293.47 of this title. The automatic exemption from the developer's 30% requirement provided herein supersedes any conflicting provision in §293.47(d) of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

(5) The bidding requirements established in TWC, Chapter 49, Subchapter I are not applicable to contracts or services related to a district's use of temporary erosion-control devices or cleaning of silt and debris from streets and storm sewers.

(6) A district's contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work. The incentive or disincentive must be part of the proposal prepared by each bidder before the bid opening.

(7) A district that operates under either Texas Water Code, Chapter 51 or Chapter 54 may utilize proceeds from the sale and issuance of bonds, notes, or other obligations to acquire an interest in a certificate of convenience and necessity (CCN), contractual rights to use capacity in facilities within the CCN and to acquire facilities within a CCN, with costs determined in accordance with applicable law such as paragraph (3) of this subsection and Chapter 291, Subchapter G of this title (relating to Utility Regulations).

§293.51. Land and Easement Acquisition.

(a) Water, sanitary sewer, storm sewer, drainage, and recreational facilities easements. All easements required within a district's boundaries for water lines; sanitary sewer lines; storm sewer lines; sanitary control at water plants; noise and odor control at wastewater treatment plants; the right-of-way necessary for a drainage swale or ditch constructed generally along a street or road in lieu of a storm sewer; recreational facilities; and the right-of-way area required by governmental jurisdictions for streets that are used for recreational facilities, shall be dedicated to the district or the public by the developer without payment or reimbursement from the district. If any easements are required for such facilities on land not owned by a developer in the district, the district may acquire such land at its appraised market value, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land, and §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) shall not apply to such acquisition.

(b) Land acquisition. A district may acquire the following in fee simple from any person, including the developer, in accordance with this section, and §293.47 of this title shall not apply to such acquisition:

(1) plant sites, including required sanitary control at water plants and noise and odor control at wastewater treatment plants;

(2) lift or pump station sites;

(3) drainage channels other than those described in subsection (a) of this section and other than those which are natural waterways with defined bed and banks;

(4) detention/retention pond sites;

(5) levees;

(6) mitigation sites for compliance with flood plain regulation and wetlands regulation or payments in lieu of mitigation;

(7) mitigation sites for compliance with endangered species permits or payments in lieu of mitigation, the cost of which shall be shared between the district and the developer as provided in §293.44(a)(22) of this title (relating to Special Considerations); or

(8) recreational facility sites that are outside of the right-of-way required by governmental jurisdictions to be dedicated for streets and roads.

(c) Price of land acquisition.

(1) If a district acquires such a site, as described in subsection (b) of this section, which is outside of the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be determined by adding to the price paid by the developer for such land or easement in a bona fide transaction between unrelated parties the developer's actual taxes and interest paid to the date of acquisition by the district. The interest rate shall not exceed the net effective interest rate on the bonds sold, or the interest rate actually paid by the developer for loans obtained for this purpose, whichever is less. If a developer uses its own funds rather than borrowed funds, the net effective interest rate on the bonds sold shall be applied. Provided, however, if the executive director determines that such price appears to exceed the fair market value of such land or easement, the executive director may require an appraisal to be obtained by the district from a qualified independent appraiser and payment to the seller may be limited to the fair market value of such land as shown by the appraisal; if the seller acquired the land after the improvements to be financed by the district were constructed, the price shall be limited to the fair market value of such land or easement established without the improvements being constructed; or if the seller acquired the land more than five years before the creation of the district and the records relating to the actual price paid and the taxes and interest costs are impossible or difficult to obtain, the district, upon executive director approval, may purchase such site at fair market value based on an appraisal prepared by a qualified, independent appraiser. If the land or easement needed by the district is being acquired based on the appraised value, the application to the commission for approval to purchase such a site must contain a request by the district to acquire the site in such manner and must explain the reason that the seller is unable to provide the price and carrying cost records.

(2) If a district acquires such a site, as described in subsection (b) of this section, which is within the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be the lesser of the amount as determined by subsection (c)(1) of this section or fair market value based on an appraisal prepared by a qualified, independent appraiser hired by the district's board upon their initiative.

(3) If the land or easement needed by the district is being acquired from an entity other than a developer or subsequent owner of developer reimbursables in the district, the district may pay the fair market value established by a qualified, independent appraiser, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land or easement.

(d) Joint storm water detention/water amenity facilities. If a detention or retention pond is also being used as an amenity by the developer or as a recreational facility as described in §293.44(a)(24) of this title, payment to the developer shall be limited to that cost that is associated only with the drainage or recreational function of the facility. The land costs of combined water amenity and detention facilities should be shared with the developer on the basis of the volume of water storage attributable to each use, with the water amenity portion subject to reimbursement as a recreational facility in the percentage described in §293.44(a)(24) of this title.

(e) Land or easements outside the district's boundaries. Land or easements needed for any district facilities outside the district's boundaries may be purchased by the district as part of the district project at a price not to exceed the fair market value thereof. The district may also pay legal, engineering, surveying, or court fees and expenses spent in acquiring such land. If the land or easements are purchased from a developer who owns land within the district, the price paid by the district shall be determined in accordance with subsection (c) of this section and such purchase price shall be subject to the provisions of §293.47 of this title unless the facilities constructed in, on, or over such land, easements, or rights-of-way are exempt from such contribution or the district is exempt from such contribution under the terms of §293.47 of this title. Districts operating under Texas Water Code, Chapter 54, except one affected by House Bill 2965, 76th Legislature, 1999, are prohibited from exercising the power of eminent domain outside the district's boundaries to acquire:

(1) a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant;

(2) a site for a park, swimming pool, or other recreational facility except a trail;

(3) a site for a trail on real property designated as a homestead as defined by Texas Property Code, §41.002; or

(4) an exclusive easement through a county regional park.

(f) Shared land or easements outside the district's boundaries. If the out-of-district land or easement is required for a drainage channel downstream of the district and a portion of such land or easement is or will be needed by another district(s), whether upstream or downstream, for development, the district shall only pay for its proportionate share of the land costs based upon the acreage of the drainage area contributing drainage to such drainage channel at full development. However, in the event there is no developer in another district(s) to dedicate the district's pro rata share of the required land, the district may pay the entire cost to acquire such land, but the commission shall order the other district(s) to reimburse the district at such time as development occurs in the other district that requires such drainage right-of-way.

(g) Regional facilities. A district may use bond proceeds to acquire the entire site for any regional plant, lift or pump sation, detention pond, drainage channel, levee, or recreational facility if the commission determines that regionalization will be promoted and the district will recover the appropriate pro rata share of the site costs, carrying costs, and bond issuance costs from future participants. The district may pay the fair market value based on an appraisal for such regional site and also may pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land. The commission shall, by separate order, order other districts participating in such regional facility to reimburse the acquiring district a proportionate share of such site costs, carrying costs, and bond issuance costs at such time as development occurs in such other districts requiring such regional site.

(h) Certification by registered professional engineer. Prior to the district purchasing or obligating district funds for the purchase of sites for water plants, wastewater plants, or lift or pump stations, the district must have a registered professional engineer certify that the site is suitable for the purposes for which it intended and identify what areas will need to be designated as buffer zones to satisfy all entities with jurisdictional authority.

(i) Joint recreational and drainage/detention sites without a constant level lake. If a drainage/detention site will also be used for recreational facility purposes, the costs are allocated 50% to drainage/detention and 50% to recreational purposes. If the recreational facility site includes an existing drainage/detention easement, then the area used to determine the reimbursement amount for the site excludes the area of the existing easement.

§293.54. Bond Anticipation Notes (BAN).

A district may issue bond anticipation notes for any purpose for which bonds of the district have previously been voted or may be issued for the purpose of refunding previously issued bond anticipation notes. All bond anticipation notes issued by a district shall conform to the following requirements.

(1) A bond application containing all projects to be financed by the BAN and the principal of and interest on the BAN shall be on file with the commission.

(2) The financial advisor of the district renders a written opinion to the district to the effect that, based on the projections contained in the bond application report on which the feasibility of the bond issue is based, the district, within 45 days, 60 days, or 180 days of application receipt by the commission for a non-developer expedited bond issue, for other expedited bond issues, or for a non-expedited bond issue, respectively:

(A) can be expected to meet the 25% build-out requirement of §293.59(k)(7) of this title (relating to Economic Feasibility of Project); and

(B) can be reasonably expected to sell its bonds, under prevailing market conditions existing at the time of the sale of the bond anticipation note, in a principal amount at least sufficient to redeem and pay the principal of, and accrued interest on, the BAN [~~on or prior to their stated maturity date~~].

(3) The proceeds of the BAN may be used to pay only the district's allowable share of the costs of facilities as provided in §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer) until the commission has unconditionally determined that the district is exempt from developer participation.

(4) The interest rate on the BAN shall be limited to the maximum rate at which the district could have issued bonds on the date of issuance of the BAN pursuant to applicable statute or valid city consent.

(5) All BAN shall be sold at par.

(6) The proceedings authorizing the issuance of the BAN shall provide that the BAN shall be redeemed at not more than their par value within 30 days after receipt of proceeds from bonds issued for the purpose of redeeming the BAN.

(7) No district funds shall be used to purchase bond or BAN insurance, collateral guarantees, letters of credit, or other forms of credit enhancement.

(8) No BAN proceeds shall be used for the purpose of paying allowable developer interest, as provided in §293.50 of this title (relating to Developer Interest Reimbursement).

(9) Except as hereinafter otherwise provided, BAN shall not be used to finance facilities unless the plans and specifications therefor have been approved by all regulatory authorities having jurisdiction thereof, approved and recorded plats or recorded easements are existing for the facilities, and such plans and specifications, and approved and recorded plats or recorded easements have been submitted to the executive director in connection with the district's pending bond application.

(10) Issuance of BAN shall not prejudice the right of the commission to refuse to approve all or any portion of a bond application or any cost or facility contained therein.

(11) BAN shall be payable solely from the proceeds of the district's bonds, as approved by the commission, and no other district funds shall be encumbered, pledged, committed or used for such purpose.

(12) In regards to utility construction, prior [~~Prior~~] to the issuance of the BAN: [~~,~~]

(A) the engineer of the district has issued a letter certifying that applicable utilities are at least 95% complete in accordance with §293.59(k)(6)(A) of this title; or

(B) the following applies:

(i) the engineer of the district has issued a letter indicating that the proposed bond issue is expected to qualify for an exemption from the 95% completion requirement of §293.59(k)(6)(A) of this title pursuant to §293.59(k)(11) of this title and the bond application includes the documentation to support the exemption; and

(ii) the developer shall provide the district a letter of credit, irrevocable development loan commitment, or other guarantee for the applicable contribution of construction and engineering costs for each project to be financed with BAN proceeds as required by §293.47(h) of this title [~~(relating to Thirty Percent of District Construction Costs to be Paid by Developer)~~].

(13) In regards to street construction, prior [~~Prior~~] to the issuance of the BAN: [~~BANs,~~]

(A) the engineer of the district has issued a letter certifying that applicable streets are at least 95% complete in accordance with §293.59(k)(6)(E) of this title; or

(B) the following applies:

(i) the engineer of the district has issued a letter indicating that the proposed bond issue is expected to qualify for an exemption from the 95% completion requirement of §293.59(k)(6)(E) of this title pursuant to §293.59(k)(11) of this title and the bond application includes the documentation to support the exemption; and

(ii) the developer and district shall enter into a street and road construction agreement as required by §293.48 of this title (relating to Street and Water, Wastewater and Drainage Utility (Street and Utility) Construction by Developer), unless exempted or inapplicable pursuant to §293.59(k)(11) of this title [~~(relating to Economic Feasibility of Project)~~].

(14) Prior to the issuance of the BAN, the engineer of the district has issued a letter stating that:

(A) the permits required by §293.59(k)(6)(B) of this title are available;

(B) the capacity in facilities required by §293.59(k)(6)(C) of this title is existing, or that the district is expected to qualify for an exemption pursuant to §293.59(k)(11) of this title and the bond application includes the documentation to support the exemption; and

(C) the capacity in facilities required by §293.59(k)(6)(D) of this title is existing, funds included in the bond issue, or that appropriate financial guarantees have been or will be provided.

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

Filed with the Office of the Secretary of State on March 31, 2006.

TRD-200601941
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 239-6087

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SUBCHAPTER F. DISTRICT ACTIONS RELATED TO CONSTRUCTION PROJECTS AND PURCHASE OF FACILITIES

30 TAC §293.69

STATUTORY AUTHORITY

The amendment is proposed under the authority of Texas Water Code, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendment implements Texas Water Code, §5.103, Rules.

§293.69. Purchase of Facilities.

(a) A district shall not purchase facilities financed or constructed by a developer, investor owned utility or water supply corporation in contemplation of sale to the district or assume facility contracts from the developer or reimburse the developer, investor owned utility or water supply corporation for funds advanced to finance construction of facilities until the executive director has given written authorization to finalize the purchase or reimbursement. Prior to requesting authorization to purchase, the district shall require its engineer to inspect the facilities and provide a written report of the condition of the facilities as they relate to the plans and specifications and note any deficiencies. A copy of the report must be submitted to the executive director along with the request for authorization to purchase. The executive director may inspect the facilities. Subject to the requirements contained in this subsection, the executive director shall issue his written approval or disapproval of such proposed purchase within 30 days after receipt of written request from a district or a district's authorized representative. If substantial deficiencies are found, the executive director may require the district to obtain an appraisal reflecting the adjusted value of the deficient facilities or deny purchase until repairs are made. The written approval shall be valid for 120 days.

(b) If the purchase of facilities or reimbursement of funds to the developer, investor owned utility or water supply corporation is not completed within 120 days after the date of the executive director's written approval, the district shall again obtain the written approval as provided herein.

(c) If the purchase is for existing facilities which have no active meters or connections (dormant), the following shall apply:

(1) water lines shall be flushed and disinfected to meet minimum standards as outlined in §290.44(f) of this title (relating to Sanitary Precautions and Disinfection);

(2) water lines must have been pressure tested within the two years prior to the purchase; and

(3) for wastewater lines, an infiltration, exfiltration, or low-pressure air test is recommended and may be required if the line has been dormant for the previous 12 months.

(d) The inspection of all underground lines should include a visual inspection above ground for depressions or sinkholes.

(e) The seller of the facilities shall be responsible for cleaning out all pipes, inlets or manholes, and outfalls which are not properly operating.

(f) The district shall not be responsible for the cost of repairs needed as a result of negligence or improper construction.

(g) Costs for testing of the facilities may be eligible for reimbursement by the district upon commission approval.

(h) This section is applicable whether a district intends on operating facilities itself or intends on conveying the facilities to a third party; however, if the conveyance is to a municipality in whose limit or extraterritorial jurisdiction the district is located, the municipality assumes all costs of operation, repair, and maintenance, and the municipality has indicated in writing to the district that it waives any requirement for an inspection under this section, then this section is not applicable.

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 March 31, 2006.

TRD-200601942
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Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 239-6087

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SUBCHAPTER J. UTILITY SYSTEM RULES AND REGULATIONS

30 TAC §§293.111 - 293.113

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendments implement Texas Water Code, §5.103, Rules.

§293.111. Water and Wastewater Service Lines and Connection.

(a) All water districts which provide or propose to provide water and wastewater service shall:

(1) adopt regulations governing the construction of commercial and/or household service lines and connections to the district's water and wastewater system;

(2) complete and have operable water and wastewater lines and a treatment plant before any connections are authorized;

(3) establish an inspection program to ensure that all new commercial and household connections are made in accordance with accepted construction practices prior to authorizing covering (back fill) of the service line trench;

(4) require that the district's inspector certify in writing that the connection was installed in accordance with accepted construction practices and in compliance with the district's regulations governing this type of work;

(5) submit for the executive director's approval copies of its regulations, inspection procedures, method of certification, and method of financing;

(6) upon submission of each bond application, document to the executive director that a water and wastewater service connection inspection program is in force for all new connections and that certification by the district's inspector of compliance with district rules is on file in the district's records.

(b) Suggested regulations for wastewater systems may be obtained from the executive director upon request. Strict enforcement of such regulations will eliminate infiltration/inflow problems in service lines, sewage treatment plant overload and, as a result, reduce operation and maintenance costs.

(c) This section is applicable whether a district intends on operating facilities itself or intends on conveying the facilities to a third party.

§293.112. Water, Wastewater and Drainage Facilities.

(a) All water districts that provide or propose to provide water or wastewater service to residential retail or commercial customers shall adopt rules that require inspection and repair of all damages to facilities the district is responsible for maintaining prior to initiation of service. The rules must, at a minimum:

(1) require that the district's operator or the district be notified prior to making any improvement or starting any construction on property within the district if such improvement, construction or equipment used in the construction will be within easements, rights-of-way or property where district facilities are located;

(2) require that an inspection be completed by the district's operator or the district to verify district facilities prior to starting construction;

(3) require that an inspection be completed by the district's operator or the district to verify district facilities after completion of construction; and

(4) require that any damages found be repaired to the satisfaction of the district or that reimbursement for repairs be made to the district before service is initiated.

(b) This section is applicable whether a district intends on operating facilities itself or intends on conveying the facilities to a third party.

§293.113. District and Water Supply Corporations' Authority Over Wastewater Facilities.

(a) A district or water supply corporation (WSC) that operates or proposes to operate a wastewater collection system may prohibit by rule the installation of private on-site wastewater holding or treatment facilities on land within the district or the corporation's service area that is not served by the district's or corporation's wastewater collection system. A district or WSC that has not received funding under Texas Water Code, Chapter 17, Subchapter K, may not require a property owner who has installed an on-site wastewater holding or treatment facility before the adoption of the rule to connect to the district's or corporation's wastewater collection system.

(b) A district or WSC that prohibits the installation of private on-site wastewater facilities shall agree to reimburse the owner of a residence the costs (engineering and construction) of connecting the residence to the district's or corporation's wastewater collection system if the distance along a public right-of-way or utility easement from the nearest point of the district's or corporation's wastewater collection system to the boundary line of the tract requiring wastewater collection services is 300 feet or more.

(c) This section is applicable whether a district intends on operating facilities itself or intends on conveying the facilities to a third party.

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 March 31, 2006.

TRD-200601943
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 239-6087

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SUBCHAPTER P. ACQUISITION OF ROAD POWERS AND FUNDING OF ROAD PROJECTS

30 TAC §293.201, §293.202

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendments implement Texas Water Code, §5.103, Rules.

§293.201. District Acquisition of Road Utility District Powers.

(a) Texas Water Code (TWC), §54.234, authorizes a municipal utility district with the power to levy taxes to petition the commission to acquire the powers granted under Texas Transportation Code, Chapter 441, to road utility districts.

(b) A municipal utility district may petition the commission to acquire the road utility district powers authorized in TWC, §54.235. An application for road utility district powers shall include the following documents: [~~This section and §293.202 of this title (relating to Application Requirements for Commission Approval) provide the requirements for petitioning the commission for road utility district powers.~~]

(1) a petition or written request that will include a detailed narrative statement of the reasons for requesting road utility district powers and the reasons why such powers will be of benefit to the district and to the land that is included in the district, signed by the president of the board of directors of the district;

(2) a certified copy of the resolution of the governing board of the district authorizing the district to petition the commission for road utility district powers;

(3) a certification that the district is operating under TWC, Chapter 54, and has the power to levy taxes, with proper statutory references;

(4) evidence that the petition or written request to the commission requesting road utility district powers was filed with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction that any part of the district is located, concurrently with filing its application for such powers with the commission;

(5) a certified copy of the latest audit of the district performed under TWC, §§49.191 - 49.194;

(6) for districts that have not submitted an annual audit, a financial statement of the district, including a detailed itemization of all assets and liabilities showing all balances in effect not later than 30 days before the date that the district submits its request for approval with the executive director;

(7) a preliminary engineering report including:

(A) a description of the existing area, conditions, topography, and proposed improvements;

(B) location map;

(C) land use map of the district area showing the district's boundary and existing and proposed roads;

(D) a listing of other entities capable of providing same or similar services and reasons why those are unable to provide such services;

(E) a certified copy of preliminary plans for all the facilities to be constructed, acquired, or improved by the district, which the district is required to submit to the governmental entity to which it proposes to convey district facilities by Texas Transportation Code, §441.013;

(F) an order or resolution approving preliminary plans by the governmental entity(ies) to which the district proposes to convey district facilities by Texas Transportation Code, §441.015;

(G) a cost analysis and detailed cost estimate of the proposed facilities to be constructed, acquired, or improved by the district under road utility district powers with a statement of the amount of bonds estimated to be necessary to finance the proposed construction, acquisition, and improvement;

(H) a narrative statement that will analyze the effect of the proposed facilities upon the district's financial condition and will demonstrate that the proposed construction, acquisition, and improvement is financially and economically feasible for the district;

(I) a summary of overlapping tax rates on land within the district;

(J) a cash flow table or narrative statement showing the projected tax rate necessary to meet debt service requirements on road bonds;

(K) a certificate from the central appraisal district indicating the district's assessed valuation; and

(L) a narrative statement addressing whether the roads will be of benefit to only the district or if they may benefit others;

(8) any other information that may be required by the executive director; and

(9) a filing fee in the amount of $100 plus the cost of the required notice.

(c) A petition for creation of a district submitted under §293.11(a) and (d) of this title (relating to Information Required to Accompany Applications for Creation of Districts) may also include a request for road utility district powers, with information required under subsection (b)(4) and (7) of this section to be provided. A separate engineering report under subsection (b)(7) of this section is not necessary as long as the information is included in the report prepared under §293.11(d)(5) of this title. If a petition for creation includes a request for road utility district powers and the district is created by the commission, then the district may not exercise road utility district powers until it has the authority to levy taxes.

§293.202. Application Requirements for Commission Approval of Road Bonds.

(a) A district that is required to obtain commission approval of water, wastewater, drainage, or recreational facility bonds is also required to obtain commission approval of bonds used to finance road projects.

(b) Bond applications for road projects are subject to the following:

(1) the requirements under Subchapter E of this chapter (relating to Issuance of Bonds), except the following:

(A) portions of §293.44(a) of this title (relating to Special Considerations) regarding the ineligibility of road costs. The engineering report shall include a detail of road costs considered ineligible under §293.44(a) of this title which are requested for funding as a road project;

(B) limitations on spreading and compacting of fill in §293.44(a)(4) of this title; and

(C) §293.52 of this title (relating to Storm Water Detention Facilities) and §293.53 of this title (relating to District Participation in Regional Drainage Systems);

(2) the requirements under Subchapter F of this chapter (relating to District Actions Related to Construction Projects and Purchase of Facilities), except the following:

(A) §293.62(1) and (2) of this title (relating to Construction Related Documents To Be Submitted to the Agency) if the field office is not required to perform an inspection under §293.69 of this title (relating to Construction Related Documents To Be Submitted to the Agency); and

(B) §293.69 of this title if:

(i) the facilities are to operated and maintained by a municipality or county;

(ii) the municipality or county bears all costs of operation and maintenance; and

(iii) the municipality or county has provided a letter to the district indicating that they do not consider a pre-purchase inspection by commission field office staff necessary since they will operate and maintain the facilities;

(3) the requirements under Subchapter G of this chapter (relating to Other Actions Requiring Commission Consideration for Approval);

(4) the requirements under paragraphs (1), (2), and (3) of this subsection even if the referenced rule states that it applies to water, wastewater, drainage, and/or recreational facilities only. This section supercedes any conflict and is intended to make the provisions applicable to road projects in the same manner as they are applicable to other

projects; an example is that roads to be financed in a bond issue are required to be 95% complete unless exempt;

(5) the requirements in this paragraph regarding easements and land acquisition:

(A) Easements for road right-of-way areas within a district shall be dedicated to the district or the public by the developer without payment or reimbursement from the district, whether the road is shared or not. If a district's boundary excludes road right-of-way areas with district areas on both sides, then easements for such areas shall also be dedicated to the district or the public by the developer without payment or reimbursement from the district, whether the road is shared or not.

(B) Land or easements outside the district's boundaries, not described in subparagraph (A) of this paragraph, are subject to §293.51(e) of this title (relating to Land and Easement Acquisition);

(C) Land or easement costs for shared facilities should be based on a districts pro rata share of construction costs;

(6) the requirements in this paragraph regarding 30% developer contribution:

(A) the requirement is applicable to non-shared district roads whether the road is located inside or outside the district;

(B) if a district is proposing to fund its pro rata share of facilities shared with a municipality, county, and/or another district, then the 30% developer contribution requirement is not applicable. Generally, a district's share should be based on the contributing area of the district versus the area served by the facility; and

(C) if a district requests a waiver based on having a debt to assessed valuation ratio of 10% or less, then the following is applicable:

(i) a district's debt is as defined in §293.47(b)(2) of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer); and

(ii) the bond application includes the district's pro rata share of facilities shared with a municipality, county, and/or another district which are necessary to access roads included in the bond issue or to serve areas included in the feasibility of the bond issue; and

(7) the requirements in this paragraph regarding construction related documents:

(A) if a project includes road facilities only, or includes road and other district facilities, then the following are required:

(i) evidence of approval of the plans by entities with jurisdiction;

(ii) approved and recorded plat, and/or recorded easements;

(iii) bid documents including bid advertising affidavits, bid tabulation, engineer's recommendation for contract award, executed contract with proposal, performance bond, and payment bond, and notice to proceed;

(iv) pay estimate, including final, as required by the commission's bond application report format as required by §293.43(5) of this title (relating to Application Requirements);

(v) any change orders; and

(vi) contract completion documents including contractor's affidavit of all bills paid, engineer's certificate of completion, final inspection report, and evidence of acceptance by the entity that is to operate and maintain the facilities;

(B) if a project includes road facilities only then, in addition to items required by subparagraph (A) of this paragraph, the following are required:

(i) pages of the approved plans that show the overall layout of the road facilities; and

(ii) evidence of field office notification of the final inspection; and

(C) if a project includes road and other district facilities then, in addition to items required by subparagraph (A) of this paragraph, the following are required:

(i) complete set of approved plans and specifications;

(ii) field office inspection report;

(iii) water and wastewater test results; and

(iv) a copy of the final or most recent pay estimate with different colored highlights used to distinguish between road costs and other district facility costs if not already distinguished in the pay estimate. If a pay estimate line item, such as clearing and grubbing, includes roads and other facility work, then an attachment to the pay estimate should be provided to explain the proration.

(c) Bond applications for road projects may:

(1) be incorporated with a bond application that proposes to fund water, wastewater, drainage and/or recreational facilities;

(2) include mitigation costs associated with fill necessary for road construction; and

(3) include funding for roads located within the district and up to one mile from the district's boundary, as long as the road benefits the district and is accessible to the public. [~~A conservation and reclamation district, operating under Texas Water Code (TWC), Chapter 54, and which has the power to levy taxes, may submit to the executive director of the commission an application for road utility district powers, which shall include the following documents:~~]

[~~(1) a petition or written request that will include a detailed narrative statement of the reasons for requesting road utility district powers and the reasons why such powers will be of benefit to the district and to the land that is included in the district, signed by the president of the board of directors of the district;~~]

[~~(2) a certified copy of the resolution of the governing board of the district authorizing the district to petition the commission for road utility district powers;~~]

[~~(3) a certification that the district is operating under TWC, Chapter 54, and has the power to levy taxes, with proper statutory references;~~]

[~~(4) evidence that the petition or written request to the commission requesting road utility district powers was filed with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction that any part of the district is located, concurrently with filing its application for such powers with the commission;~~]

[~~(5) a certified copy of the latest audit of the district performed under TWC, §§49.191 - 49.194;~~]

[~~(6) for districts that have not submitted an annual audit, a financial statement of the district, including a detailed itemization of all assets and liabilities showing all balances in effect not later than 30~~

~~days before the date that the district submits its request for approval with the executive director;~~]

[~~(7) a certified copy of preliminary plans for all the facilities to be constructed, acquired, or improved by the district, which the district is required to submit to the governmental entity to which it proposes to convey district facilities by Texas Transportation Code, §441.013;~~]

[~~(8) a cost analysis and detailed cost estimate of the proposed facilities to be constructed, acquired, or improved by the district under road utility district powers with a statement of the amount of bonds estimated to be necessary to finance the proposed construction, acquisition, and improvement;~~]

[~~(9) a narrative statement that will analyze the effect of the proposed facilities upon the district's financial condition and will demonstrate that the proposed construction, acquisition, and improvement is financially and economically feasible for the district;~~]

[~~(10) any other information that may be required by the executive director; and~~]

[~~(11) a filing fee in the amount of $100 plus the cost of the required notice.~~]

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 March 31, 2006.

TRD-200601944
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 239-6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §§523.1, 523.3, 523.4, 523.6

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to 31 TAC §§523.1, 523.3, 523.4, and 523.6 to use language more consistent with current rules and regulations governing water quality issues and other language corrections. These changes consist of: §523.1(1)(B) where the word confined (as used in relationship to animal feeding operations) is being deleted; §523.3(a) where language is being added to specify that a water quality management plan must meet the resource quality criteria for water quality; §523.3(e)(2) where the name of the Natural Resources Conservation Service is being corrected; §523.3(e)(3) and §523.4(3)(C) where the name of the Natural Resources Conservation Service is again corrected and the name of the Texas Agricultural Extension Service is corrected to the Texas Cooperative Extension; §523.3(f)(4) and §523.3(h)(5) are amended to state status reviews of plan implementation will not be done on an annual basis; §523.3(h)(1) is amended to delete the unneeded definition of a poultry operating unit; §523.6(b)(2) the unneeded letter a is being deleted from the sentence: §523.6(b)(3) the sentence is corrected with the addition of the word by; §523.6(b)(8) is amended to state an eligible person may also be any person designated to represent the applicant as provided by a durable power of attorney, court order or other valid legal document; §523.6(b)(11), §523.6(c)(2)(H), §523.6(e)(6), §523.6(f)(1)(B), §523.6(f)(5), and §523,6(g)(1) are amended to delete the word resource (as used in reference with certified resource management plan) and replace it with the term water quality; §523.6(b)(13) is being proposed as a new paragraph (13) to define an operating unit as land, whether contiguous or noncontiguous, owned and/or operated by the applicant as an independent management unit for agricultural or silvicultural purposes; §523.6(b)(13) - (15) are renumbered to accommodate the new paragraph (13) described above; §523.6(b)(16) which defines a resource management plan is being deleted as it is no longer applicable; §523.6(d)(2) is amended to specify requests by districts for allocations must be submitted by September 1st of each year and being deleted is language specifying that request be on forms provided by the State Board and shall include all information required by such forms; §523.6(e)(3)(B) is amended to he or she as an eligible person; §523.6(e)(5) is amended to use the term eligible practices in the definition of eligible purpose and the term conservation land treatment is deleted from the definition; §523.6(e)(8) is amended to delete the word authorized and replace it with required (as it relates to signatures on applications and agreements); §523.6(e)(8)(A) - (B) are amended to specify eligible persons required to sign applications will also include the landowner in cases where the eligible person does not hold title to the land constituting the operating unit and all other language referring to designated representatives in subparagraph (B) is deleted; §523.6(e)(8)(C) relating to other representatives of persons who could sign an application or agreement is deleted in its entirety; §523.6(f)(4) is amended by replacing the word is with the word are; §523.6(f)(5) is amended to add language to specify the landowner must sign the application for cost-share pursuant to subsection (e)(8)(B) and assume the responsibility of the maintenance agreement, in addition all appropriate signatures are required prior to payment after completion of maintenance and the language of the eligible person is, is deleted since the section refers to the landowner; §523.6(g)(3) is amended to delete the word may and replace it with the word will (in relation to requiring a refund of cost-share when maintenance is not conducted in compliance with specifications and new language is added to specify the State Board may grant a waiver to this requirement on a case-by-case basis in consultation with the SWCD; and §523.6(j) is added as new language to state that pursuant to the Agriculture Code of Texas, §201.311, one or more SWCD's may be designated to administer portions of this section as determined by the State Board.

Mr. Kenny Zajicek, Fiscal Officer, Texas State Soil and Water Conservation Board has determined that for the first five year period there will be no fiscal implications for state or local government as a result of administering these amended rules.

Mr. Zajicek has also determined that for the first five year period these amended rules are in effect, the public benefit anticipated as a result of administering these amended rules will be a consistency of terms and definitions and better understanding of the program by any and all individuals involved with and/or concerned with this program.

There is no anticipated cost to small businesses or individuals resulting from these amended rules.

Comments on the proposed amendments may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250 ext. 231.

The amendments are proposed under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the Texas State Soil and Water Conservation Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by this proposal.

§523.1. Scope and Jurisdiction.

The Texas State Soil and Water Conservation Board (state board) is the lead agency in this state for activity relating to abating agricultural and silvicultural nonpoint source pollution.

(1) Nonpoint source pollution is pollution caused by diffuse sources that are not regulated as point sources and normally is associated with agricultural, silvicultural, and urban runoff, runoff from construction activities, etc. Such pollution is the result of human-made or human-induced alteration of the chemical, physical, biological, and radiological integrity of water. In practical terms nonpoint source pollution does not result from a discharge at a specific, single location (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation. Pollution from nonpoint sources occurs when the rate at which pollutant materials entering water bodies or groundwater exceeds natural rates or total loadings exceed natural loadings.

(A) (No change.)

(B) Animal [~~Confined animal~~] feeding operations may be considered as point or nonpoint sources depending on size, location, and other considerations. For the purposes of these rules, all [~~confined~~] animal feeding operations not required to obtain a permit from the Texas Commission on Environmental Quality will be nonpoint sources.

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

§523.3. Water Quality Management Plans.

(a) A water quality management plan is a site specific plan for agricultural or silvicultural lands which includes appropriate land treatment practices, production practices, management measures, technologies or combinations thereof which when implemented will achieve a level of pollution prevention or abatement determined by the State Board in consultation with the local soil and water conservation district and Texas Commission on Environmental Quality to be consistent with state water quality standards. To be certified, a water quality management plan must meet the resource quality criteria for water quality and cover all lands whether contiguous or non-contiguous that constitutes an operating unit for agricultural or silvicultural purposes.

(b) - (d) (No change.)

(e) Practice standards.

(1) (No change.)

(2) Practice standards will be based on criteria in the Natural Resources [~~Resource~~] Conservation Service, Field Office Technical Guide; however, modification of those practice standards to ensure consistency with state water quality standards and the state agricultural and silvicultural nonpoint source management program will be made as necessary.

(3) Practice standards will be developed in consultation with the local soil and water conservation district, with assistance and advice of the USDA, the Natural Resources [~~Resource~~] Conservation Service, Texas Cooperative [~~Agricultural~~] Extension [~~Service~~], Texas Forest Service, Texas Agricultural Experiment Station, Texas Commission on Environmental Quality, the local underground water conservation district and others as determined to be needed by the State Board.

(f) Implementation schedule.

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

(4) The State Board in consultation with affected soil and water conservation districts will conduct [~~an annual~~] status reviews [~~review~~] of plan implementation.

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

(g) (No change.)

(h) Water Quality Management Plans for Poultry Facilities.

(1) After September 1, 2001 in accordance with the schedule in paragraph (2) of this subsection, all poultry facilities producing poultry for commercial purposes will be required to develop and implement a certified water quality management plan covering the poultry operating unit[~~, which consists of all poultry production facilities and lands upon which poultry wastes are applied~~].

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

(5) The State Board in consultation with the local soil and water conservation district will conduct [~~annual~~] status reviews of certified water quality management plans covering poultry facilities on a schedule determined by the State Board.

(6) - (8) (No change.)

§523.4. Resolution of Complaints.

Complaints concerning the violation of a Water Quality Management Plan or a violation of a law or rule relating to nonpoint source pollution will be addressed as follows.

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

(3) Corrective action plan. Once the determination of the need for action is made, a corrective action plan will be developed.

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

(C) The corrective action plan will be developed with the technical assistance from the Natural Resources [~~Resource~~] Conservation Service, Texas Cooperative [~~Agricultural~~] Extension [~~Service~~], Texas Forest Service, the local underground water conservation district, and/or State Board as appropriate.

(4) (No change.)

§523.6. Cost-Share Assistance for Soil and Water Conservation Land Improvement Measures.

(a) (No change.)

(b) Definitions. For the purposes of these rules the following definitions shall apply.

(1) (No change.)

(2) Applicant--A person(s) who applies for [a] cost-share assistance from the SWCD.

(3) Available funds--Monies budgeted, unobligated and approved by the State Board for cost-share assistance.

(4) - (7) (No change.)

(8) Eligible person--Any of the land holders eligible to apply for cost-share assistance or any person designated to represent the applicant as provided by a durable power of attorney, court order or other valid legal document.

(9) - (10) (No change.)

(11) Maintenance agreement--A written agreement between the eligible person and the SWCD wherein the eligible person(s) agrees, as a condition of the receipt of State cost-share funds, to implement and maintain all measure(s) in the certified water quality [~~resource~~] management plan consistent with its implementation schedule. The maintenance agreement shall remain in effect for a minimum period of two years after the certified water quality [~~resource~~] management plan is completely implemented for all practices except those cost-shared. The maintenance agreement shall remain in effect on cost-shared practices for the expected life of the practice as established by the State Board or for a period of two years after the certified water quality [~~resource~~] management plan is completely implemented, whichever period of time is longer.

(12) (No change.)

(13) Operating Unit--Land, whether contiguous or non-contiguous, owned and/or operated by the applicant as an independent management unit for agricultural or silvicultural purposes.

(14) [~~(13)~~] Performance agreement--A written agreement between the eligible person and the SWCD wherein the eligible person agrees to perform conservation land improvement measures for which allocated funds are being paid.

(15) [~~(14)~~] Priority system--The system devised by the SWCD, under guidelines of the State Board, for ranking approved conservation land treatment measures and for facilitating the disbursement of allocated funds in line with the SWCD's priorities.

(16) [~~(15)~~] Program year--The period from September 1 to August 31.

[~~(16) Resource management plan--A site specific blueprint for implementation of soil and water conservation land improvement measures. It includes a record of the eligible person's decisions made during planning and the resource information needed for implementation and maintenance of the plan that has been reviewed and approved by the SWCD.~~]

(17) - (18) (No change.)

(c) Responsibilities.

(1) (No change.)

(2) The SWCDs shall:

(A) - (G) (No change.)

(H) Approved applications will be filed in the Districts copy of the applicant's Water Quality [~~Resource~~] Management Plan.

(I) - (L) (No change.)

(d) Administration of Funds.

(1) (No change.)

(2) Requests for Allocations. SWCDs within areas designated for cost-share program must submit requests for a cost-share fund allocation to the State Board by September 1st each year [~~on forms provided by the State Board, and shall include all information required by such forms~~].

(3) (No change.)

(e) Eligibility for Cost-Share Assistance.

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

(3) Eligible land. Any of the following categories of land shall be eligible for cost-share assistance:

(A) (No change.)

(B) Land leased by an eligible person over which he/she has [~~as~~] adequate control and which land is utilized as a part of his operating unit.

(C) (No change.)

(4) (No change.)

(5) Eligible purposes. Cost-share assistance shall be available only for those eligible practices [~~conservation land treatment~~] measures included in an approved resource management plan and determined to be needed by the SWCD to:

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

(6) Eligible practices. Conservation land treatment measures which the State Board has approved and which are included in the applicant's approved water quality [~~resource~~] management plan shall be eligible for cost-share assistance. The list of eligible practices will be approved by the State Board at the beginning of each fiscal year. The SWCDs shall designate their list of eligible practices from those practices approved by the State Board. SWCDs may request the State Board's approval to offer conservation land treatment measures not included in the State Board's list of approved practices. The use of special conservation land treatment measures is limited to those measures that can solve unique problems in a SWCD and which conforms with one or more of the purposes of the cost-share program. Requests for special conservation land treatment measures will be filed in writing with the State Board in time to obtain action and notification in writing from the State Board of its decision(s) prior to announcing the cost-share program locally for the program year. Conservation land treatment measures may be included in a SWCD's list of eligible practices offered for cost-share assistance only as approved by the State Board.

(7) (No change.)

(8) Persons required [~~authorized~~] to sign applications and agreements. All applications and agreements shall be signed by:

(A) The eligible person and;

(B) the landowner in cases where the eligible person does not hold title to the land constituting the operating unit.

[~~(B) Any person designated to represent the eligible person, provided an appropriate notarized durable power of attorney has been filed with the SWCD office; or~~]

[~~(C) The responsible person or administrator, in cases of trusts or estates, provided that letters of administration or letters of testamentary have been submitted to the SWCD in lieu of a power of attorney.~~]

(f) Cost-Share Assistance Processing Procedures.

(1) Responsibility of applicants. Applicants for cost-share assistance for conservation land treatment measures shall:

(A) (No change.)

(B) Where an applicant does not have an approved water quality [~~resource~~] management plan and has not determined the anticipated total cost of the requested measure(s), he/she, as part of the application, may request assistance from the SWCD in developing such plan and determining costs.

(C) - (F) (No change.)

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

(4) Performance Agreement. As a condition for receipt of cost-share assistance for conservation land treatment measures, the eligible person receiving the benefit of such assistance shall agree to perform those measures in accordance with standards established by Texas State Soil and Water Conservation Board. Completion of the performance agreement and the signature of the eligible person are [~~is~~] required prior to payment.

(5) Maintenance Agreement. As a condition for receipt of cost-share assistance, the person(s) receiving the assistance shall agree to implement and maintain all measures in the certified water quality [~~resource~~] management plan consistent with its implementation schedule. The maintenance agreement shall remain in effect for a minimum period of two years after the certified water quality [~~resource~~] management plan is completely implemented for all practices except those cost-shared. The maintenance agreement shall remain in effect on cost-shared practices for the expected life of the cost-shared practice(s) as established by the State Board or for a period of two years after the certified water quality [~~resource~~] management plan is completely implemented, whichever period of time is longer. The landowner must sign the application for cost-share pursuant to subsection (e)(8)(B) of this section and assumes the responsibility of the maintenance agreement. Completion of the maintenance agreement and all appropriate signatures are [~~signature of the eligible person is~~] required prior to payment.

(6) - (10) (No change.)

(g) Maintenance of Practices.

(1) Requirements for maintenance of practices applied using cost-share funds will be outlined in the eligible persons water quality [~~resource~~] management plan and reviewed with the eligible person at the time of application for cost-share.

(2) (No change.)

(3) The SWCD will [~~may~~] require refund of any or all of the cost-share paid to an eligible person when the applied conservation land treatment measure(s) has not been maintained in compliance with applicable design standards and specifications for the practice during its expected life as agreed to by the eligible person. The State Board may grant a waiver to this requirement on a case-by-case basis in consultation with the SWCD.

(4) - (5) (No change.)

(h) - (i) (No change.)

(j) Pursuant to the Texas Agriculture Code, §201.311, one or more SWCD's may be designated to administer portions of this section as determined by the State Board.

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 March 29, 2006.

TRD-200601896

Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: May 14, 2006
For further information, please call: (254) 773-2250 x252

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 847. PROJECT RIO EMPLOYMENT ACTIVITIES AND SUPPORT SERVICES

The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 847 related to Project RIO Employment Activities and Support Services:

Subchapter A. General Provisions, §§847.1-847.3

Subchapter B. Project RIO Job Seeker Responsibilities, §847.11 and §847.12

Subchapter C. Project RIO Services, §847.21 and §847.22

Subchapter D. Project RIO Employment Activities, §847.31

Subchapter E. Project RIO Support Services, §847.41

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 847 rules changes is to:

(1) implement the direction of House Bill (HB) 2837, enacted by the 79th Texas Legislature, Regular Session (2005), concerning Project Reintegration of Offenders (Project RIO);

(2) modify language referencing specific divisions of the Texas Department of Criminal Justice (TDCJ);

(3) reflect revised funding strategies to support Project RIO service provision; and

(4) remove provisions related to Local Workforce Development Board (Board) responsibilities for the distribution of ex-offender documents.

HB 2837 directs increased data connectivity between the Texas workforce system and its Project RIO partners-TDCJ and the Texas Youth Commission (TYC). Additionally, the legislation directs the Windham School District, which is responsible for providing academic and vocational training services in TDCJ correctional institutions, to ensure that the training provided is targeted to current and emerging job opportunities in the Texas labor market.

Because of TDCJ's reorganization, the proposed rules remove references to TDCJ's specific organizational divisions and replace them with the more generic terms, TDCJ "correctional institutions" and "supervising offices."

The previous funding strategy to support Project RIO service provision relied heavily upon co-enrolling job seekers in Food Stamp Employment and Training (FSE&T) services. Currently, Texas Workforce Center and satellite office staff is encouraged to enroll Project RIO job seekers in the most appropriate employment and support services for the individual. The proposed rules reflect that co-enrollment continues to benefit Project RIO service provision; however, language regarding specific reliance on FSE&T has been deleted.

TDCJ has assumed responsibility for the distribution of employment documents (e.g., Social Security cards, birth certificates, DD214s [U.S. Department of Defense form that evidences military service and separation circumstances], driver's licenses) upon an individual's release from incarceration. Accordingly, the proposed rules delete the reference to Boards performing this function.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor, nonsubstantive, editorial changes are made throughout Chapter 847 that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

§847.1. Purpose

The Commission proposes amending §847.1(a) by replacing references to the TDCJ "State Jail Division facility" and "Institutional Division" facility with the term TDCJ "correctional institution," both in this subsection and throughout Chapter 847.

The Commission proposes amending language in §847.1(b) to specify that the memorandum of understanding is between the Agency, TDCJ, and TYC.

The Commission proposes amending §847.1(c) to reflect new funding strategies to support Project RIO service provision. Specific reference to FSE&T funds is removed and replaced with a broader reference to integrating Project RIO service provision with the full range of activities and services available through the Texas workforce system.

§847.2. Definitions

The Commission proposes amending §847.2(1)(A) by replacing the reference to the TDCJ "Institutional Division" with the collective reference TDCJ "correctional institution," and deleting the reference to the TDCJ "Parole Division," referring instead to "parole" supervision by TDCJ.

The Commission proposes deleting §847.2(1)(B), which stipulates the eligibility of State Jail releasees for Project RIO services. Proposed §847.2(1)(A) defines Project RIO job seekers as releasees from all classes of TDCJ correctional institutions. Section 847.2(1)(C) is renumbered as §847.2(1)(B).

The Commission proposes amending §847.2(3), which defines TDCJ, by removing references to the "Institutional, Parole, and State Jail Divisions," which are specific divisions of TDCJ.

The Commission proposes amending §847.2(4), which defines TYC, by expanding the definition to include TYC's responsibilities for parole operations.

The Commission proposes deleting §847.2(5), which defines Food Stamp Employment and Training. The Commission has broadened its use of resources for serving ex-offenders and adjudicated youth; therefore, it is unnecessary to define specific services.

The Commission proposes adding new §847.2(5) to define the Windham School District, which provides prerelease educational and vocational training services to adult offenders incarcerated in TDCJ correctional institutions. This new definition is added in response to the provisions of HB 2837 and the functions Windham School District performs in preparing offenders for reentry into society.

§847.3. General Board Responsibilities

The Commission proposes amending §847.3(a) by requiring that individuals referred as Project RIO job seekers also include "self-referred individuals." In addition, proposed changes to this subsection include adding adjudicated youth as part of the service population.

The Commission proposes amending §847.3(b) by replacing "General Equivalency Diploma" with "General Educational Development (GED) credential."

The Commission proposes amending §847.3(c)(1), Parole Supervising Offices, by replacing references to "Parole Division" with "TDCJ or TYC," and replacing references to "TDCJ Parole Offices" with "supervising office."

The Commission proposes amending §847.3(c)(2), TDCJ Institutional Division, by retitling the paragraph "Correctional Institutions," which provides a collective reference for TDCJ divisions. Further, the Commission proposes incorporating coordination with TYC correctional institutions, as this process is essentially similar to that required of TDCJ correctional institutions. The Commission also proposes amending §847.3(c)(2) by removing the requirement to provide results of Project RIO services to the TDCJ Institutional Division. The Commission believes that this information is more properly provided to the supervising office as set forth in §847.3(c)(1).

The Commission proposes deleting §847.3(c)(3), TDCJ State Jail Division. Proposed §847.3(c)(2) includes the TDCJ State Jail Division in the collective term "correctional institutions."

HB 2837 requires the coordination of educational and vocational training efforts conducted by Windham School District and prioritizes efforts to assist ex-offenders in securing employment related to their prerelease training. The Commission proposes new §847.3(c)(3), Windham School District, which states that Boards must coordinate on an ongoing and continuing basis with the Windham School District by providing labor market information for their local workforce development area, including current and emerging jobs. Additionally, Boards must include the education and training received during incarceration in the Project RIO job seeker's Individual Employment Plan in order to maximize the number of training-related job referrals the Project RIO job seeker receives.

The Commission proposes deleting §847.3(c)(4) relating to coordination with TYC Offices. Proposed §847.3(c)(1) and §847.3(c)(2) set forth the coordination requirements with TYC correctional institutions and parole offices; therefore, §847.3(c)(4) is no longer necessary.

The Commission proposes adding new §847.3(c)(4), which requires the development of memoranda of understanding between Boards, TDCJ, TYC, and the Windham School District pursuant to Project RIO service provision. Currently, this requirement is contained in the Agency's funding instruments used to support TDCJ, TYC, and Board Project RIO services. The proposed new paragraph requires, at a minimum, that the memoranda of understanding must include referral coordination, progress reporting, and the provision of labor market information to the Windham School District.

The Commission proposes amending §847.3(d)(1) by removing the specific references to "WIA Adult and Youth services and Food Stamp Employment and Training (FSE&T)" services. The Commission's intent is to integrate Project RIO services with all services available through the Texas Workforce Centers.

The Commission proposes deleting §847.3(d)(2), which requires that Boards route employment documents, such as birth certificates and Social Security cards, secured by TDCJ and TYC during incarceration to ex-offenders. TDCJ and TYC have assumed this responsibility; therefore, it is no longer a requirement of the Boards.

Section 847.3(d)(3), stipulating establishment of a parole point of contact, is renumbered as §847.3(d)(2). The Commission proposes replacing the reference to "the TDCJ Parole Division and the TYC" with the collective reference "TDCJ and TYC supervising offices."

Section 847.3(d)(4), stipulating outreach of Project RIO job seekers at TDCJ and TYC facilities, is renumbered as §847.3(d)(3). The Commission proposes replacing the references to TDCJ "Parole Division" and TYC "facilities" with the collective reference "TDCJ and TYC supervising offices."

Section 847.3(d)(5), stipulating Board participation in TDCJ job fairs/career days, is renumbered as §847.3(d)(4). The Commission proposes amending this paragraph by adding participation in TYC job fairs/career days and using the collective reference to "correctional institutions."

Section 847.3(d)(6), stipulating the use of reporting and document management systems, is renumbered as §847.3(d)(5). The Commission proposes amending this paragraph to require the timely reporting of data reflecting Project RIO service provision in order to ensure that the charge of HB 2837 is addressed.

Section 847.3(d)(7) and §847.3(d)(8) are renumbered as §847.3(d)(6) and §847.3(d)(7), respectively.

The Commission proposes amending §847.3(f) by changing the paragraph title from "TDCJ Notice" to "TDCJ and TYC Notice," thereby including notice to TYC. Additionally, the collective term "supervising office" replaces the specific reference to "TDCJ Parole Division."

Currently, §847.3(h) requires that employment referrals regarding adjudicated youth be confidential. The Commission proposes expanding the requirement to state that all information related to the adjudicated status of a youth must be confidential and must not be disclosed to other entities or individuals.

SUBCHAPTER B. PROJECT RIO JOB SEEKER RESPONSIBILITIES

§847.11. Job Seeker Responsibilities

The Commission proposes deleting §847.11(1), which requires that Project RIO job seekers complete and sign an application for food stamp benefits. The proposed deletion of this requirement reflects the change in funding strategies used to support Project RIO service provision. While the referral of most Project RIO job seekers to the Texas Health and Human Services Commission (HHSC) for food stamp assistance is appropriate, the language in rule is no longer necessary because the funding strategies do not explicitly rely upon FSE&T resources.

Sections 847.11(2)-847.11(8) are renumbered as §§847.11(1)-847.11(7), respectively.

§847.12. Job Seeker Failure to Comply

The Commission proposes amending §847.12 by deleting the phrase "referred by TDCJ Parole Division" because not all job seekers are referred by supervising offices. Further, the Commission proposes amending §847.12 by replacing the specific reference to the "TDCJ Parole Division" and including the requirement that the "TDCJ or TYC supervising office" be notified.

SUBCHAPTER C. PROJECT RIO SERVICES

§847.21. Job Seeker Assessment

The Commission proposes amending §847.21(b) by adding that assessments also must include evaluations of "knowledge, skills, and abilities." In addition, the Commission proposes amending §847.21(b)(4) by replacing the reference to parole "officer" with "office." The Commission believes that this information is more properly coordinated with the supervising office as set forth in §847.3(c)(1).

§847.22. Job Seeker Individual Employment Plan

The Commission proposes amending §847.22(1) by changing the reference to TDCJ or TYC "facility" to the collective reference "correctional institution."

The Commission proposes amending §847.22(4) by changing the reference to TYC "facility" to the collective reference "correctional institution."

SUBCHAPTER D. PROJECT RIO EMPLOYMENT ACTIVITIES

§847.31. Employment Activities for Project RIO Job Seekers

The Commission proposes deleting §847.31(a)(1) because the funding strategy used to support Project RIO services has changed from an explicit reliance on FSE&T resources to one in which Project RIO job seekers have access to the full range of employment and training activities provided by the Texas workforce system; therefore, this paragraph is no longer necessary. Additionally, the Commission proposes removing §847.31(a)(2) and incorporating the text in §847.31(a). Sections 847.31(a)(2)(A)-847.31(a)(2)(G) are renumbered as §§847.31(a)(1)-847.31(a)(7).

The Commission proposes replacing the term "officer" with "office" in §847.31(b)(1). The Commission also proposes to reorder the language in §847.31(c) for better clarity.

SUBCHAPTER E. PROJECT RIO SUPPORT SERVICES

§847.41. Provision of Project RIO Support Services

The Commission proposes amending §847.41(a) by specifying that post-employment needs are included as an allowable support service.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

The Agency hereby certifies that the proposed rules have been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

Luis M. Macias, Director of Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to better prepare Project RIO job seekers to meet the workforce needs of Texas employers and to better meet Project RIO job seekers' needs for long-term employment.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of each of Texas' 28 Boards and the TWC Advisory Committee. The Commission provided the policy concept to each of these groups for consideration and review. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§847.1 - 847.3

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules will affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 19; Texas Labor Code, Chapter 306; and Texas Government Code, Chapter 552.

§847.1. Purpose.

(a) Purpose. The purpose of Project RIO is to provide a statewide employment referral program designed to reintegrate into the labor force persons sentenced to a Texas Department of Criminal Justice (TDCJ) correctional institution [~~State Jail Division facility or the Institutional Division~~] and persons committed to the Texas Youth Commission (TYC).

(b) Scope of Rules. The Project RIO standards and guidelines, set forth in this chapter, address the roles and responsibilities of Boards to ensure that Project RIO employment activities and support services are available statewide through the Texas Workforce Centers consistent with 40 TAC Chapter 801 relating to the One-Stop Service Delivery Network. Project RIO employment activities and support services are provided to adult and youth offenders before release by [~~the~~] TDCJ and [~~the~~] TYC. Post-release employment activities and support services are provided through the Texas Workforce Centers, and are designed to provide ex-offenders with employment activities and support services that promote employment, meet the needs of Texas employers, and help reduce recidivism. The provisions in this chapter are intended to be consistent with Texas Labor Code, Chapter 306;[~~,~~] Texas Government Code §2308.312;[~~,~~] and the Agency's memorandum of understanding [~~Memorandum of Understanding~~] with [~~the~~] TDCJ and [~~the~~] TYC.

(c) Funding Integration. The Commission intends, to the greatest extent possible, to integrate all available funding sources in the delivery of Project RIO services, and support and expand Project RIO services by ensuring that ex-offenders and adjudicated youth have access to the full range of employment and training activities provided by the One-Stop Service Delivery Network [~~leveraging the General Revenue appropriation for Project RIO and federal FSE&T funds~~].

§847.2. Definitions.

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

(1) Project RIO job seeker--an individual involved with the Texas criminal or juvenile justice systems that may include the following:

(A) Adults [~~adults~~] who were sentenced to a [~~formerly confined by the~~] TDCJ correctional institution [~~Institutional Division~~], and [~~who~~] are within one year after their release from incarceration, or [~~and~~] are currently under, or within one year of completion of their term of parole supervision by [~~the~~] TDCJ [~~Parole Division~~]; and

[~~(B) adults who were formerly confined in a TDCJ State Jail facility and who are within one year after their release from incarceration; and~~]

(B) [~~(C)~~] Adjudicated [~~adjudicated~~] youth ages 16 through 21, seeking employment activities and support services, who were formerly confined in a TYC correctional institution [~~facility~~].

(2) Job Seeker Responsibility Agreement--an agreement between the Project RIO job seeker and the Texas Workforce Center [~~operator~~] or the Board's designated service provider. This agreement outlines the Project RIO job seeker's responsibilities for continued enrollment in Project RIO activities.

(3) TDCJ--the Texas Department of Criminal Justice[~~, which includes the Institutional, Parole, and State Jail Divisions,~~] is the state agency that manages the overall operations of the state's prison, parole, and state jail systems.

(4) TYC--the Texas Youth Commission[~~, which~~] is the state's juvenile corrections agency that[~~,~~] manages the overall operations of the state's youth correctional institutions and parole operations [~~facilities~~].

[~~(5) Food Stamp Employment and Training (FSE&T)--the activities and support services that assist food stamp recipients in entering employment through participation in allowable job search, training, education, or workfare activities that promote self-sufficiency.~~]

(5) Windham School District--the school district that is responsible for providing academic as well as career and technology education to eligible offenders incarcerated in TDCJ correctional institutions.

§847.3. General Board Responsibilities.

(a) Role of Boards. A Board shall ensure that individuals referred as Project RIO job seekers by [~~the~~] TDCJ and [~~the~~] TYC, as well as self-referred individuals, [~~as Project RIO job seekers~~] participate in Project RIO employment activities and support services, and other workforce activities and support services as appropriate. The employment activities and support services, as defined in this chapter, should meet the needs of local employers, prepare Project RIO job seekers to compete in the labor market, and assist ex-offenders and adjudicated youth in locating employment.

(b) Board Planning. A Board shall develop, amend, and modify its Integrated Plan to incorporate and coordinate the design and management of the delivery of Project RIO employment activities and support services with the delivery of other workforce employment, training, and educational services identified in Texas Government Code §2308.251 *et seq.*, Texas Government Code §2308.312 *et seq.*, as well as other employment and training services included in the One-Stop Service Delivery Network as set forth in Chapter 801 of this title. The [~~Texas Workforce~~] Commission's [~~(Commission)~~] intent is to assist Project RIO job seekers with securing employment as quickly as possible; however, Project RIO - Youth may need basic skills training and education to secure employment. Specifically, Boards shall consider integration with WIA Youth services or other funding sources, as appropriate, for assisting Project RIO - Youth with obtaining the basic General Educational Development [~~General Equivalency Diploma~~] (GED) credential or basic skills training.

(c) Board Coordination. The Boards shall coordinate with the following entities to ensure the transition to employment of Project RIO job seekers:

(1) [~~TDCJ~~ -]Parole Supervising Offices. A Board shall coordinate the provision of Project RIO employment activities and support services with the referring TDCJ or TYC [~~Parole Division~~] supervising office [~~officer~~]. This coordination shall ensure that the supervising office is [~~TDCJ Parole Offices are~~] made aware of the results of the initial referral for Project RIO services, as well as periodic updates on program participation status as determined appropriate for the individual.

(2) Correctional Institutions [~~TDCJ - Institutional Division~~]. A Board shall coordinate the provision of Project RIO employment activities and support services with [~~the~~] TDCJ and TYC correctional institutions [~~Institutional Division~~] by utilizing the data and resources developed [~~by the TDCJ Institutional Division Project RIO component~~] prior to the offender's or adjudicated youth's release. This coordination shall ensure that post-release Project RIO activities and services build upon and complement the services provided in the correctional institutions. [~~This coordination shall ensure that the TDCJ Institutional Division is made aware of the results of the initial referral for Project RIO services, as well as periodic updates on program participation status as determined appropriate for the individual.~~]

[~~(3) TDCJ -State Jail Division. A Board shall coordinate the provision of Project RIO employment activities and support services with the TDCJ State Jail Division by utilizing the data and resources developed by the State Jail Project RIO component prior to the offender's release. This coordination shall ensure that the TDCJ State Jail Division is made aware of the results of the initial referral for Project RIO services, as well as periodic updates on program participation status as determined appropriate for the individual.~~]

(3) Windham School District. Boards shall coordinate on an ongoing and continuing basis with Windham School District by providing labor market information related to their local workforce development area (workforce area), including current and emerging jobs, in order that Windham School District may better meet the needs of Texas employers through education and training services. Additionally, Boards shall fully incorporate in Project RIO job seekers' Individual Employment Plans the education and training received during incarceration in order to maximize employment referrals that are directly related to that education and training.

[~~(4) TYC Offices. A Board shall coordinate the provision of Project RIO employment activities and support services with the referring TYC parole and contracted parole officer. This coordination shall ensure that the TYC Offices are made aware of the results of the initial referral for Project RIO services, as well as periodic updates on program participation status as determined appropriate for the individual.~~]

(4) Memoranda of Understanding. Pursuant to coordination efforts, Boards shall develop memoranda of understanding with TDCJ, TYC, and the Windham School District establishing the systems, structures, and processes for the provision of Project RIO services. The memoranda of understanding must include, but are not limited to, procedures for the following activities:

(A) Referral coordination for parolees or adjudicated youth;

(B) Progress reporting related to job seeker status and services received; and

(C) The provision of labor market information to the Windham School District.

(5) Other Partners. For the purposes of ensuring that Project RIO job seekers have the necessary support services available to them to enable successful entry [~~reentry~~] into the labor force, a Board shall develop cooperative agreements and service arrangements meeting the requirements of [~~the~~] Texas Labor Code §306.007(a).

(d) Service Delivery Strategies. A Board shall develop a Project RIO Service Delivery Strategy that fully incorporates and ensures the following elements:

(1) The [~~the~~] efficient delivery and linkage of Project RIO employment activities and support services within the workforce area's One-Stop Service Delivery Network with other employment and training services funded through the Texas Workforce Centers [~~Center, in particular WIA Adult and Youth services and, Food Stamp Employment and Training (FSE&T)~~];

[~~(2) the employment documents secured by the TDCJ Institutional Division, State Jail Division, or the TYC Project RIO are properly routed to the ex-offender;~~]

(2) [~~(3)~~] A[~~a~~] point of contact for TDCJ and TYC supervising offices [~~the TDCJ Parole Division and the TYC~~] to facilitate the exchange of [~~access to~~] information regarding the Project RIO job seeker's progress toward securing employment and related participation information;

(3) [~~(4)~~] The[~~the~~] outreach of Project RIO job seekers at TDCJ [~~Parole Division~~] and TYC supervising offices [~~facilities~~];

(4) [~~(5)~~] The [~~the~~] participation of the One-Stop Service Delivery Network in job fairs/career days held in TDCJ and TYC correctional institutions [~~facilities~~];

(5) [~~(6)~~] The timely and accurate reporting of data reflecting Project RIO service provision as well as the status of referrals for

service [~~the use of reporting and document management systems related to Project RIO participation~~ as required by the ~~Commission~~];

(6) [~~(7)~~] All [~~all~~] performance standards are met, as developed by the Commission[~~, are met~~]; and

(7) [~~(8)~~] The[~~the~~] performance of any other duties, as required by the Commission, necessary to implement the intent of Texas Labor Code, Chapter 306.

(e) Access to Project RIO Employment Activities and Support Services. A Board shall ensure that the oversight and monitoring of program requirements and participant activities occur on an ongoing basis, as determined appropriate by the Board, and consist of the following:

(1) tracking and reporting, as required by the Commission, of employment activities and support services, including appropriate data relating to referrals, placements, specialized on-the-job training, and completion of training, such as GED completion, college credit and noncredit course accomplishments, or other data, as applicable;

(2) determining and arranging for any referrals to support services needed to assist the Project RIO job seeker in complying with Project RIO employment activities to address barriers to employment; and

(3) ensuring progress toward achieving the goals and objectives in the Project RIO job seeker's Individual Employment Plan, as set forth in §847.22 of this chapter, and the job seeker Responsibility Agreement, as set forth in §847.3(i) of this section.

(f) TDCJ and TYC Notice. A Board shall ensure that notification to the supervising office [~~TDCJ Parole Division~~] is made in a timely manner if a job seeker fails to comply with the job seeker Responsibility Agreement as set forth in §847.3 of this chapter.

(g) Employer Notice. A Board shall ensure that employers are informed at the time of the employment referral of the Project RIO job seeker's status as an ex-offender and the availability of Work Opportunity Tax Credits and fidelity bonding [~~Fidelity Bonding~~] services.

(h) Youth Confidentiality. All information regarding the adjudicated status of a youth shall be held in strict confidence and shall not be disclosed to any other entity or person. A Board shall ensure that employment referrals for adjudicated youth are made in accordance with the confidentiality requirements set forth in state statutes, state rules, and Commission policies.

(i) Job Seeker Responsibility Agreement. Boards shall ensure that the job seeker Responsibility Agreement is signed by the Project RIO job seeker and the Texas Workforce Center [~~operator~~], or the Board's designated service provider, and contains language detailing[~~indicating~~] that the job seeker:

(1) is ready and able to seek employment;

(2) will comply with all service requirements as specified [~~outlined~~] in the Individual Employment Plan;

(3) will report for employment interviews at the scheduled appointment time(s); and

(4) will notify the Texas Workforce Center[~~operator~~], or the Board's designated service provider, upon securing[~~of~~] employment.

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 March 31, 2006.

TRD-200601954
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 475-0829

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SUBCHAPTER B. PROJECT RIO JOB SEEKER RESPONSIBILITIES

40 TAC §847.11, §847.12

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules will affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 19; Texas Labor Code, Chapter 306; and Texas Government Code, Chapter 552.

§847.11. Job Seeker Responsibilities.

Project RIO job seekers shall:

[~~(1) complete and sign an application for food stamp benefits through the Texas Department of Human Services, unless the job seeker has a drug conviction on or after August 22, 1996;~~]

(1) [~~(2)~~] sign the job seeker Responsibility Agreement;

(2) [~~(3)~~] participate in employment activities as specified in §847.22 and as described in §847.31 of this chapter;

(3) [~~(4)~~] attend scheduled Project RIO appointments;

(4) [~~(5)~~] notify the [ ]Texas Workforce Center [~~operator~~], or the Board's designated service provider, upon securing employment [~~when starting work on any job~~];

(5) [~~(6)~~] participate in or receive support services as described in §847.22 and §847.41 of this chapter, necessary to enable the Project RIO job seekers to work or participate in employment activities, including counseling, treatment, and vocational or physical rehabilitation;

(6) [~~(7)~~] be free of outstanding warrants and not in pre-revocation status; and

(7) [~~(8)~~] be drug-free and comply with other terms or conditions of parole.

§847.12. Job Seeker Failure to Comply.

Project RIO job seekers [~~referred by the TDCJ Parole Division,~~] who fail to meet the requirements of the Individual Employment Plan and job seeker Responsibility Agreement, may be deemed ineligible for Project RIO employment activities and support services, and such participation status shall be reported to the TDCJ or TYC supervising office [~~Parole Division~~]. Failure to comply, as determined by the Texas Workforce Center [~~operator~~], or the Board's designated service provider, includes but is not limited to:

(1) failing to report for two scheduled interviews;

(2) turning down a position of employment that is consistent with the skills possessed by the Project RIO job seeker;

(3) quitting an employment activity without cause; or

(4) being terminated from a job for misconduct.

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 March 31, 2006.

TRD-200601955
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 475-0829

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SUBCHAPTER C. PROJECT RIO SERVICES

40 TAC §847.21, §847.22

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules will affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 19; Texas Labor Code, Chapter 306; and Texas Government Code, Chapter 552.

§847.21. Job Seeker Assessment.

(a) A Board shall ensure that initial and ongoing assessments are performed to determine the employability and retention needs of Project RIO job seekers.

(b) Assessments shall include evaluations of knowledge, skills, and abilities as well as [~~strengths and~~] potential barriers to securing and retaining employment, such as:

(1) information identified in the assessments provided by agency partners, which includes [~~include~~] background information relating to education and vocational skills training obtained while incarcerated, employment history, academic achievements, and past skills attainments;

(2) other skills and abilities, employment, and educational history in relation to employers' workforce needs in the local labor market;

(3) support services needs; and

(4) family circumstances that may affect participation, including the existence of domestic violence, substance abuse, and mental illness, or the need for parenting skills training, which, if identified, may require coordination through the parole or contracted parole office [~~officer~~], as one of the factors considered in evaluating employability.

(c) Assessments shall result in the development of an Individual Employment Plan, as described in §847.22 of this chapter.

§847.22. Job Seeker Individual Employment Plan.

Boards shall ensure that the Individual Employment Plan:

(1) incorporates information provided by the referring agency partner, including any individual employment planning provided while in a TDCJ or TYC correctional institution[~~facility~~];

(2) identifies and coordinates the provision of services available through the Texas Workforce Centers;

(3) is based on assessments, as described in this chapter;

(4) contains any prevocational goals established for Project RIO - Youth participants while in a TYC correctional institution[~~facility~~];

(5) contains employment goals to meet the needs of the local labor market;

(6) allows Project RIO job seekers to find and secure employment that utilizes[~~requires~~] their skills;

(7) meets the needs of employers by linking and matching the skills of Project RIO job seekers to the job-skills requirements of the employers;

(8) includes strategies for addressing barriers identified in the assessment; and

(9) is signed by the Project RIO job seeker.

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 March 31, 2006.

TRD-200601956
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 475-0829

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SUBCHAPTER D. PROJECT RIO EMPLOYMENT ACTIVITIES

40 TAC §847.31

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules will affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 19; Texas Labor Code, Chapter 306; and Texas Government Code, Chapter 552.

§847.31. Employment Activities for Project RIO Job Seekers.

(a) Boards shall ensure that employment activities are provided for Project RIO job seekers, as determined by the Texas Workforce Center [~~operator~~], or the Board's designated service provider, which may include the provision of job search and job readiness services, which incorporate the following:

[~~(1) activities set forth in 40 TAC Chapter 813 relating to FSE&T activities;~~]

[~~(2) job search and job readiness services, which incorporate the following:~~]

(1) [~~(A)~~] information and referral to employment opportunities;

(2) [~~(B)~~] job-skills assessment;

(3) [~~(C)~~] counseling;

(4) [~~(D)~~] occupational exploration, including information on local emerging and demand occupations;

(5) [~~(E)~~] interviewing skills and practice interviews;

(6) [~~(F)~~] assistance with applications and resumes; and

(7) [~~(G)~~] guidance and motivation for development of positive work behaviors necessary for the labor market.

(b) Boards shall ensure that referrals to employment opportunities are based on the Project RIO job seeker's assessment, training, skills, and conditions of release. The referrals to jobs may be restricted to certain available employment based on:

(1) recommendations from the agency partners, including the applicable parole office [~~officer~~] or contracted parole office [~~officer~~];

(2) considerations of factors that may increase the likelihood of success of the individual in retaining employment; or

(3) consideration of factors that may help reduce the likelihood of recidivism.

(c) In order to maximize the opportunities for Project RIO job seekers to secure employment, Boards shall ensure that other employment and training activities available through the One-Stop Service Delivery Network and paid for with funds other than Project RIO are considered and provided as deemed appropriate by the[~~'~~] Texas Workforce Center [~~operator~~], or the Board's designated service provider[~~, in order to maximize the opportunities for Project RIO job seekers to secure employment~~].

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 March 31, 2006.

TRD-200601957
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 475-0829

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SUBCHAPTER E. PROJECT RIO SUPPORT SERVICES

40 TAC §847.41

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules will affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 19; Texas Labor Code, Chapter 306; and Texas Government Code, Chapter 552.

§847.41. Provision of Project RIO Support Services.

(a) Boards[~~A Board~~] shall ensure that support services, which address barriers to employment, [~~or~~] participation in employment services, and post-employment support services needs, are provided to a Project RIO job seeker as determined by the Boards' [~~Board's~~] policies and Individual Employment Plans, and the Texas Workforce Centers [~~Center operator~~], or the Boards' [~~Board's~~] designated service providers [~~provider~~].

(b) Boards [~~A Board~~] shall ensure that referrals to support services as specified in the memorandum of understanding [~~Memorandum of Understanding~~] referenced in Texas Labor Code §306.004, §306.005, and §306.007 are made for Project RIO job seekers.

(c) Boards [~~A Board~~] shall ensure that referrals are made, as determined appropriate by the Texas [~~'Texas~~] Workforce Centers [~~Center operator~~], or the Boards' [~~Board's~~] designated service providers [~~provider~~], to other available support services, including low-income housing, application for food stamp benefits, low-cost medical assistance, substance abuse treatment, counseling, vocational or physical rehabilitation, and other services.

(d) Boards [~~A Board~~] shall ensure that hiring incentives are made available for Project RIO job seekers, to include:

(1) Work Opportunity Tax Credits screening and conditional certification; and

(2) fidelity bonding [~~Fidelity Bonding~~] services, which are available through the Agency [~~Commission~~].

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 March 31, 2006.

TRD-200601958
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 475-0829

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §1.85

The Texas Department of Transportation (department) proposes amendments to §1.85, concerning department advisory committees.

EXPLANATION OF PROPOSED AMENDMENTS

Section 1404 of Public Law 109-59, referred to as SAFETEA-LU, created a new federal Safe Routes to School (SRS) Program. Program guidance issued by the Federal Highway Administration, United States Department of Transportation, recommends that states involve experts and professionals representing a broad spectrum of stakeholders to assist with implementation of the program. Accordingly, the department proposes to modify the composition of the existing Bicycle Advisory Committee to allow the committee to assist the department in evaluating and selecting candidate projects for SRS funding.

Proposed language to §1.85(a)(4) adds the SRS program as a specific purpose of the committee. The representation is also expanded to include interested parties to allow for the inclusion of additional members with the expertise necessary to review and evaluate applications submitted for the SRS Program.

An amendment is proposed to provide that the committee will report its findings and recommendations regarding the SRS Program to the director of the department division responsible for administering the SRS program.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the section as proposed.

Carlos Lopez, P.E., Director, Traffic Operations Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Lopez has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be improved safety for school age children as well as encouraging children to walk and bicycle to school. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.85 may be submitted to Carlos Lopez, P.E., Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on May 15, 2006.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§1.85. Department Advisory Committees.

(a) Creation.

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

(4) Bicycle Advisory Committee.

(A) Purpose. The purpose of the Bicycle Advisory Committee is to advise the commission on bicycle issues and matters related to the Safe Routes to School Program. By involving representatives of the public, including bicyclists and other interested parties, the department helps ensure effective communication with the bicycle community, and that the bicyclist's perspective will be considered in the development of departmental policies affecting bicycle use, including the design, construction and maintenance of highways. The committee will also provide recommendations to the department on the Safe Routes to School Program.

(B) (No change.)

(C) Manner of reporting. The committee shall report its advice and recommendations to the commission, except for matters relating to the Safe Routes to School Program. Under the Safe Routes to School Program the committee shall report its recommendations to the director of the division responsible for administering the program.

(5) (No change.)

(b) - (d) (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 March 31, 2006.

TRD-200601961
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 463-8683

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CHAPTER 25. TRAFFIC OPERATIONS

SUBCHAPTER I. SAFE ROUTES TO SCHOOL PROGRAM

43 TAC §§25.500 - 25.505

The Texas Department of Transportation (department) proposes amendments to existing §§25.500 - 25.504 and new §25.505, concerning the safe routes to school program.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

Section 1404 of Public Law 109-59, SAFETEA-LU, created a new federal Safe Routes to School (SRS) Program. This proposal is designed to amend the existing state program rules to allow implementation of the new federal program.

As proposed, §25.500, Purpose, is amended to replace the reference to the state Safe Routes to School Program created under Transportation Code, §201.614 with the new federal program created under SAFETEA-LU. The section also notes that the SRS program will be a comprehensive program designed to enable and encourage all children to bicycle and walk to school, promote safety, reduce traffic, reduce fuel consumption, and improve air quality in the vicinity of schools.

This section is also amended to remove the reference to local contributions since these are not required under the new federal program.

Proposed §25.501, Definitions, changes the existing definition of "school" to "eligible school" to include those schools comprised of any grades from kindergarten to eighth grade. This change is consistent with the requirements of federal law and program guidance.

Section 25.501(8), public property, is also modified to include property owned by any public entity or school district. This change broadens the location for an SRS project and is consistent with federal law.

Various changes are proposed for §25.502, Project Eligibility, to bring the Texas SRS program into compliance with federal law and program guidance as issued by the Federal Highway Administration.

Language regarding eligible applicants is deleted from §25.502 since it is repeated in §25.503 regarding project applications.

The proposed amendments make various changes to allow both infrastructure and non-infrastructure applications to be submitted under the SRS program.

Language allowing improvements for vehicle drop-off and pick-up areas as an eligible infrastructure project is deleted since this is specifically prohibited under the new federal program guidance. The provision for secure bicycle parking facilities is added as an eligible project since the federal guidance specifically allows this.

Language is added outlining the types of non-infrastructure projects that may be submitted for funding consideration. This is not a comprehensive list, but provides general categories.

Section 25.502 is also amended to allow an SRS infrastructure project to be built on any public right of way within a two-mile radius of an eligible school. The section is also amended to allow projects to be located on private property under certain circumstances that guarantee public access to the project. Again, these changes are consistent with federal guidance.

The word "department" is deleted from proposed subsection 25.502(e) regarding funding sources since SRS projects will now be funded primarily with federal funds earmarked specifically for the SRS program.

Existing language on local contributions is deleted since this is not required under the new federal program. The new SRS program allows for 100% federal funding for the selected projects.

Proposed subsection 25.502(f), regarding project boundaries, is amended to be consistent with federal guidelines. Language is also added to this subsection describing eligible project boundaries for non-infrastructure projects.

Section 25.503, Project Application, discusses the requirements for SRS project applications. The section is amended to note that the department will issue separate applications for infrastructure and non-infrastructure projects.

Language is proposed to allow infrastructure projects to be submitted by political subdivisions as defined in §25.501 or a state agency. The department believes that state agencies will have valuable insight into projects that may benefit the safety of school age children and should also be allowed to develop and submit project proposals.

Language is also proposed to allow non-infrastructure projects to be submitted by political subdivisions as defined in §25.501, schools and school districts, non-profit organizations, for-profit organizations, the state of Texas or any combination of these entities. The department believes that many organizations, including those that have not traditionally partnered with the department, will have insight into projects that may prove beneficial to the development of a successful SRS program.

Language is clarified to detail how both infrastructure and non-infrastructure project proposals are submitted. Infrastructure projects must be submitted to the department district in which the project is located. This new language notes that should a project extend to beyond more than one district, the applicant should contact the department division responsible for the program to identify the appropriate department district for project submission.

This new language also requires non-infrastructure projects to be submitted to the department division administering the SRS program.

Amendments are proposed to §25.504 regarding project evaluation and selection. The section is amended to broaden the expertise of the existing evaluation committee of department staff. The section is also amended to allow this committee to be appointed by the executive director or his or her designee.

Section 25.504 is also amended to include the department's Bicycle Advisory Committee, created under §1.85, as part of the project evaluation process. Section 1.85 is being amended under a separate, simultaneous rule action being proposed in connection with these amendments.

Section 25.504 is amended to note that both evaluation committees will report their findings to the director of the division responsible for administering the program. The committees are required to use the evaluation methodology developed by the division administering the program to ensure uniformity and consistency in project evaluation. The appropriate division director will review all recommendations and will prepare the final proposal for the Texas Transportation Commission (commission).

The proposed language creates separate evaluation criteria for infrastructure and non-infrastructure projects.

Language is proposed to add the potential for a project to create a safer walking and bicycling built environment within two miles of a school as an evaluation selection criterion. This item is taken directly from the federal program guidance and the department believes it represents a significant benchmark to be considered when evaluating these types of projects.

This proposal also reformats two criteria (link to a comprehensive traffic safety plan and other relevant factors) that were previously noted as providing additional consideration when submitted by applicants. These proposed items are now simply included as parts of the evaluation criteria.

Selection criteria for non-infrastructure projects are included in the proposed language.

The proposed language creates an approval process in which the director of the division responsible for administration of the Safe Routes to School Program provides a recommendation to the commission. The commission will select the final projects from those recommended by the division director.

Language relating to project overruns is deleted and added as new language to the proposed new §25.505 relating to project funding.

New §25.505, Project Funding, is added to provide guidance on various aspects of project funding. This section notes that the Safe Routes to School Program is a reimbursement program, denotes the minimum allocation percentages between infrastructure and non-infrastructure projects, notes that there are no required local contributions, notes that project overruns will be considered by the department on a case-by-case basis, and that the commission may allocate funding to the department for state initiated projects. These provisions provide consistency with the federal Safe Routes to School Program guidelines.

New §25.505(f), regarding project evaluation and monitoring, is consistent with the federal program guidelines and also represents prudent and responsible stewardship of public funds.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments and new section as proposed are in effect, there will be positive fiscal implications for state or local governments, whose proposals are selected, as a result of enforcing or administering the amendments and new section. There are no anticipated economic costs for persons required to comply with the amendments and new section as proposed. There may be costs associated with the development of an SRS project application, however, development of such an application is optional on the part of the state and local jurisdictions and no portion of the rule requires the development of such an application.

Texas has been authorized federal SRS program funds under SAFETEA-LU. Local governments will be able to access these funds for improvements designed to improve safety in and around schools and encourage bicycle use and walking by school age children.

Carlos Lopez, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

PUBLIC BENEFIT

Mr. Lopez has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new section will be improved safety for school age children as well as other benefits related to encouraging these children to bicycle and walk to school. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§25.500 - 25.504 and new §25.505 may be submitted to Carlos Lopez, P.E., Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on May 15, 2006.

STATUTORY AUTHORITY

The amendments and new section are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§25.500. Purpose.

Section 1404 of Public Law 109-59 created a federal Safe Routes to School Program. This subchapter implements this program [~~Transportation Code, §201.614 directs the Texas Department of Transportation to establish the Safe Routes to School Program~~]. The overall purpose of this program is to enhance safety in and around school areas through a comprehensive [~~construction~~] program designed to improve the bicycle and pedestrian safety of school age children; enable and encourage children, including those with disabilities, to walk and bicycle to school; and to facilitate projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools. The Safe Routes to School Program is a competitive [~~construction~~] program funded through state and federal funds [~~and local contributions~~]. The sections under this subchapter prescribe the policies and procedures for the implementation of the program.

§25.501. Definitions.

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

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) District--One of 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

(4) Division--An organizational unit in the department's Austin headquarters.

(5) Eligible school--A public or private school that contains any of the grades from kindergarten to eighth grade.

(6) [~~(5)~~] Executive director--The executive director of the Texas Department of Transportation or his or her designee.

(7) [~~(6)~~] On-system road--A road or highway that is a portion of the designated state highway system.

(8) [~~(7)~~] Off-system road--A road or highway open to the public that is not part of the designated state highway system, such as a county road or city street.

(9) [~~(8)~~] Public property--Property owned by a state, city, [~~or~~] county, other public entity, or school district.

(10) [~~(9)~~] Political subdivision--A municipality or county within the State of Texas.

(11) [~~(10)~~] Program--The Safe Routes to School Program.

[~~(11) School--A public or private elementary, intermediate, middle, junior high, or high school.~~]

(12) State highway system--The system of highways in the state included in a comprehensive plan prepared by the executive director with the approval of the commission, in accordance with Transportation Code, §201.103.

§25.502. Project Eligibility.

[~~(a) Eligible applicants. Projects may be submitted by political subdivisions.~~]

(a) [~~(b)~~] Types of projects. Projects eligible to receive funding under this program include those involving both infrastructure related and non-infrastructure related activities. [~~the following:~~]

(b) Infrastructure projects. Eligible infrastructure based projects include:

(1) sidewalk improvements such as new sidewalks, widened sidewalks, sidewalk gap closures, sidewalk repairs, curb cuts for ramps, and the construction of curbs and gutters;

(2) pedestrian/bicycle crossing improvements such as new or upgraded traffic signals, crosswalks, median refuges, pavement markings, traffic signs, pedestrian or bicycle over-crossings and under-crossings, flashing beacons, traffic signal phasing extensions, bicycle sensitive actuation devices, pedestrian activated signal upgrades, and sight distance improvements;

(3) on-street bicycle facilities such as new or upgraded bicycle lanes, widened outside lanes or roadway shoulders, geometric improvements, turning lanes, channelization and roadway realignment, traffic signs, and pavement markings;

(4) traffic diversion improvements including [~~improved pick-up/drop-off areas,~~] separation of pedestrians and bicycles from

vehicular traffic adjacent to school facilities, and traffic diversion away from school zones or designated routes to a school;

(5) off-street bicycle and pedestrian facilities including exclusive multi-use bicycle or pedestrian trails and pathways; [~~and~~]

(6) traffic calming measures for off-system roads such as roundabouts, traffic circles, curb extensions at intersections that reduce curb-to-curb roadway travel widths, center islands, full and half-street closures, and other speed reduction techniques;

(7) secure bicycle parking facilities; and

(8) other projects that promote pedestrian and bicycle safety of children in and around school areas.

(c) Non-infrastructure projects. Non-infrastructure projects are those activities designed to encourage walking and bicycling to school. Eligible projects include: [~~Project location.~~]

(1) public awareness campaigns and outreach efforts to the news media and community leaders; [~~Eligible projects may be located on or off the designated state highway system; however, candidate projects must be located on public property.~~]

(2) traffic education and enforcement in the vicinity of schools; [~~Eligible projects must be located within a two-mile radius of a school.~~]

(3) providing student education on bicycle and pedestrian safety, health, and the environment; and

(4) other projects that promote pedestrian and bicycle safety of children in and around school areas.

(d) Location for infrastructure projects. Infrastructure projects must be located within public right of way within a two-mile radius of an eligible school. The proposal may include projects that are located:

(1) on or off the dedicated state highway system; or

(2) on private lands that have a public easement if there is a written legal easement or other written legally binding agreement that ensures public access to the project.

(e) [~~(d)~~] Project cost limitations. The executive director may limit the maximum amount of [~~department~~] funding participation per project for each year of the program. This limitation will be based on the availability of and demand for program funding and may be established with each call for projects issued under this subchapter. The project cost limitation will apply to all projects submitted for consideration.

[~~(e) Required local contribution. Political subdivisions awarded funding under this program must provide a local contribution toward the total cost of the project when the project is located on municipal or county right of way. This requirement is consistent with regulations governing federal funds.~~]

(f) Eligible project boundaries.

(1) Infrastructure project applications may [~~Except as provided in paragraph (2) of this subsection, each project application must~~] be in connection with a single school campus, multiple schools, a region, or a school district.

(2) Applications for infrastructure improvements covering multiple school sites, a region, or school district will be accepted for projects in which similar improvements are being made at each school site.

(3) Non-infrastructure projects may cover a single school, multiple schools, schools in a region or district, or be statewide in nature.

(g) Projects proposed on the state highway system. Any proposed infrastructure project under this program on the state highway system will not be eligible if the district finds that the project interferes or disrupts any planned improvements or existing infrastructure.

§25.503. Project Application.

(a) Call for applications. The department will call for applications for Safe Routes to School projects by publication in the *Texas Register*. This notice will contain information on the application, application content, and submission deadlines. The department will also consider alternative means of publication of the program announcement as necessary to reach interested local jurisdictions and interested parties.

(b) The department will issue separate applications for infrastructure and non-infrastructure projects.

(c) [~~(b)~~] Who may apply.

(1) For infrastructure projects the [~~The~~] department will accept and consider candidate projects from state agencies and political subdivisions.

(2) For non-infrastructure projects the department will accept and consider candidate projects from state agencies, political subdivisions, schools, school districts, non-profit organizations, and for-profit organizations, or any combination of these entities.

(d) [~~(c)~~] How to submit a project.

(1) Applications for infrastructure projects must be submitted [~~In order to submit a proposed project, an eligible political subdivision must submit its application~~] to the district engineer of the district responsible for the area in which the proposed project [~~improvement~~] will be constructed.

(2) If the limits of the project extend to more than one district, the applicant should contact the responsible division for the appropriate district office to submit the application prior to the due date.

(3) Project applications for non-infrastructure projects must be submitted to the responsible division administering the program as identified in the department's call for projects.

(4) [~~(2)~~] The application must be completed and returned to the appropriate office [~~district~~] within the required deadlines as described in the project call for applications notification.

(5) [~~(3)~~] The candidate project must utilize the application forms [~~form~~] prescribed by the department for this purpose.

(6) [~~(4)~~] Copies of the application forms [~~form~~] and the Safe Routes to School Program Guidelines will be available at each department district as well as from the responsible division in Austin. The documents will also be published on the department web site.

§25.504. Application [~~Project~~] Evaluation and Selection.

(a) Application [~~Project~~] evaluation. The responsible division will review each program application for completeness and compliance with project eligibility requirements described in §25.502 of this subchapter. Applications that do not comply with these requirements or that are not received by the published deadline will not be evaluated.

(b) Project evaluation process [~~panel~~].

(1) The executive director or designee will appoint a project evaluation committee [~~panel~~] of department staff with expertise in bicycle safety, pedestrian safety, roadway safety, roadway

design, [~~or~~] traffic engineering , or other related fields to review, evaluate, and make recommendations on the proposals submitted for the program [~~statewide~~].

(2) The department's Bicycle Advisory Committee, as created under §1.85 of this title (relating to department advisory committees), will also serve as a project evaluation committee to review, evaluate, and make recommendations on the proposals submitted for the program.

(3) The project advisory committees will evaluate the proposals using the evaluation methodology developed by the responsible division administering the program.

(4) The project advisory committees will provide their project selection recommendations and supporting documentation to the director of the responsible division administering the program.

(5) The director of the responsible division administering the program will recommend a program of candidate projects for consideration by the commission.

(c) Selection criteria for infrastructure projects.

[~~(1)~~] Safe Routes to School applications for infrastructure projects meeting all requirements included in §25.502 will be evaluated based on the following selection criteria:

(1) [~~(A)~~] identification of current and potential safe walking and bicycling routes to school;

(2) the potential of the proposal to create a safer walking and bicycling built environment within two miles of a school;

(3) [~~(B)~~] the demonstrated need of the applicant;

(4) [~~(C)~~] identification of safety hazards;

(5) [~~(D)~~] the potential of the proposal to reduce child injuries and fatalities;

(6) [~~(E)~~] the potential of the proposal to encourage walking and bicycling among students;

(7) [~~(F)~~] support for the project by the community and interested parties;

(8) [~~(G)~~] identification of detailed construction costs; [~~and~~]

(9) [~~(H)~~] compliance with design criteria established by the responsible division;[~~.~~]

[~~(2) Additional consideration will be given to~~]

(10) applications that demonstrate a link to an existing or planned [~~a~~] comprehensive traffic safety plan; and [~~have secured additional funding or other resources to extend the beneficial effect of the proposed project.~~]

[~~(3) Additional consideration will also be given to~~]

(11) other factors relating to the proposed project deemed necessary to promote pedestrian and bicycle safety of children in and around school areas.

(d) Selection criteria for non-infrastructure projects. Safe Routes to School applications for non-infrastructure projects meeting all requirements included in §25.502 of this subchapter will be evaluated on the following selection criteria:

(1) identification of the current and potential overall need for programs to encourage and promote walking and bicycling to the proposed project location;

(2) identification of existing safety hazards and the need for a behavioral program to increase awareness of those issues;

(3) the potential of the proposal to reduce child injuries and fatalities through education, enforcement, or other activities;

(4) the potential of the proposal to encourage walking and bicycling among students;

(5) support for the project by the community and interested parties;

(6) applications that demonstrate a link to an existing or planned comprehensive traffic safety plan; and

(7) other factors deemed necessary to promote pedestrian and bicycle safety of children in and around school areas.

(e) [~~(d)~~] Commission approval. Approval by the commission will be based on the recommendations from the director of the responsible division administering the program [~~panel evaluations~~], funding availability, the safety of the traveling public, the overall goals of the program, and safety in and around school areas.

(f) [~~(e)~~] Approved projects. After approval by the commission, the department will notify applicants of the project selection status.

(1) Approved infrastructure projects must comply with design, plan preparation, [~~and~~] letting requirements, and other requirements established by the director of the responsible division.

(2) Approved non-infrastructure projects must comply with the requirements established by the director of the responsible division included in the call for project proposals.

[~~(f) Project overruns. Approved program funds are a fixed amount. Project applicants will be responsible for all cost overruns.~~]

§25.505. Project Funding and Monitoring.

(a) Reimbursement. The Safe Routes to School Program is a reimbursement program for costs incurred. Any costs incurred by applicants prior to project approval, final contract execution, and federal project authorization are not eligible for reimbursement under the program.

(b) Funding allocations between project types. Non-infrastructure based projects will make up at least 10% and no more than 30% of the overall program funding. The exact proportion of infrastructure to non-infrastructure funding will be determined by the department.

(c) Local contribution. No local contribution is required for projects submitted for funding under the Safe Routes to School Program.

(d) Project overruns. Project overruns will be evaluated by the responsible division administering the program on a case-by-case basis to determine if the project will continue and how the additional costs will be covered.

(e) Commission allocation for state initiated projects. The commission may allocate funds to the department for use on the state highway system for Safe Routes to School projects initiated by the department.

(f) Project monitoring and evaluation. The department will monitor and evaluate the effectiveness of each project funded on this subchapter to ensure compliance with state and federal law and regulation. Each recipient of funding is required to cooperate fully with the department in this process.

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

Filed with the Office of the Secretary of State on March 31, 2006.

TRD-200601962
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 463-8683

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CHAPTER 31. PUBLIC TRANSPORTATION

The Texas Department of Transportation (department) proposes amendments to §31.11, Formula Program, and §31.36, Section 5311 Grant Program.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §456.022 requires the Texas Transportation Commission (commission) to adopt rules to establish a formula allocating state and federal funds among individual eligible public transportation providers. The statute states that the formula may take into account a transportation provider's performance, the number of its riders, the need of residents in its service area for public transportation, population, population density, land area, and other factors established by the commission. Transportation Code, §456.008 states that the commission may establish different performance measures for different sectors of the transit industry and also states that the performance measures shall assess the efficiency, effectiveness, and safety of the public transportation providers.

On May 26, 2005, the commission amended §31.11 and §31.36 regarding formulas for the distribution of state and federal funds. The commission now desires to further refine the formulas to better allocate funding resources; to better reflect the requirements of state and federal law; and to reflect the department's goals to reduce congestion, enhance safety, expand economic opportunity, improve air quality, and increase the value of transportation assets.

The amendments to §31.11, Formula Program, revise the current formula for state funds. Section 31.11(b)(1)(A) proposes that funds for small urban transit providers be divided into two tiers. Tier one will include transit providers that restrict transit eligibility for all public transportation services to the elderly and persons with disabilities. State funding available in tier one is calculated by multiplying the available urban funding by the population of elderly and persons with disabilities in tier one providers, divided by the service eligible population of urbanized areas receiving funding under this subchapter. Tier two will include transit providers that provide any service to the general population. The funds for tier two will be the remaining balance of the available funds after the funds for the tier one have been allocated. Funds within each tier will be allocated to transit providers based on §31.11(b)(1)(B) and (C). The proposal will assist in the allocation of available funding by more accurately reflecting the nature of the service provided. The proposal will also reflect the requirements of state and federal law and will reflect an assessment of public transportation provider efficiency, effectiveness, and safety.

Section 31.11(b)(1)(B) and (C) propose that any further distribution of state funds allocated to urban areas be based on the relative proportion of urbanized area population and a weighted average of four performance criteria: local funds per operating expense; ridership per capita; ridership per revenue mile and revenue miles per operating expense. The relative proportion of urbanized area is intended to capture the need of the transit operator, and the weighted average of the four criteria is intended to capture the performance of the transit operator. The new provisions propose that the allocation of transportation funding will be based on 80% need and 20% performance for fiscal year 2007 (the second year of the 2006 - 2007 biennium); 65% need and 35% performance for the 2008 - 2009 biennium; and 50% need and 50% performance for each biennium thereafter. This proposal will further emphasize the performance of individual public transportation providers in allocating funding. The commission recognizes performance as an important aspect of providing public transportation services in an effective and efficient manner, and wishes to increase the emphasis on performance in the allocation of transportation funding as part of the department's plan to improve statewide transportation, enhance safety, and improve air quality.

Section 31.11(b)(1)(B) proposes new provisions to change the consideration of population for tier one providers to 199,999, or the city population, whichever is less. The reason for this change is that the urbanized area population may be significantly larger than the population reported for the incorporated jurisdiction. The proposal would reflect the actual population eligible to receive service from a particular transit provider and this change would more fairly allocate funds to account for that smaller population eligible to receive services.

Section 31.11(b)(1) proposes to change the method for calculating the criterion called "ridership per capita." Formerly, for urban areas with populations greater than 199,999, this criterion was adjusted to limit the impact of the population to 199,999. The department proposes to repeal the provision that defines this criterion. The impact would be to use the total applicable population, and therefore calculate more fairly this performance indicator for those providers in areas with populations greater than 199,999. The department further proposes that state funds performance criteria for the urban areas be based on the following weighted criteria: 30% local funds per operating expense, 20% ridership per capita, 30% ridership per revenue mile, and 20% revenue miles per operating expense. This amendment to the formula would add two new measures, revenue miles per operating expense and passengers per revenue mile, while deleting one measure, revenue miles per capita. The proposal also changes the allocation from an even distribution to a distribution emphasizing local support and service effectiveness. These proposed changes would establish a broader set of measures to emphasize service effectiveness and efficiency. A broader set of measures will create more opportunities for the diverse small urban transit providers to show improvements in performance.

The department proposes to repeal provisions that gave the commission the authority to allocate a portion of the funds to address strategic priorities. This proposed amendment would help ensure all funds in these programs would be allocated according to the established formula, while retaining the requirement that recipients of funding under this subparagraph be in good standing with the department.

Subsections 31.11(b)(2)(A) and (B) propose that the allocation of state funds for the rural providers be based on a figure that represents 75% population and 25% land area, relative to all other rural public transportation providers and on an equally weighted formula of three criteria: local funds per operating expense, ridership per revenue mile and revenue miles per operating expense. The figure that represents 75% population and 25% land area is intended to capture the need of the transit operator, and application of the equally weighted criteria is intended to capture performance of the transit operator. The new provisions propose that the allocation of transportation funding will be based on 80% need and 20% performance for fiscal years 2007 and 2008; and 65% need and 35% performance for fiscal year 2009 and each fiscal year thereafter. This change would increase the emphasis on performance, and reward providers who improve the efficiency or effectiveness of their service.

Section 31.11(b)(2) further proposes that the performance criteria for the rural areas be changed. Currently, the formula considers local funds per operating expense, operating expenses per mile, and operating expense per passenger. The department proposes to change the measure of operating expense per passenger to passengers per revenue mile, and the measure of operating expense per mile to revenue miles per operating expense. The relative weights of the three criteria will not change, but will remain at one third each for the following criteria: local funds per operating expense, ridership per revenue mile and revenue miles per operating expense. The proposal will provide a measure of service effectiveness. It is an acknowledged goal of the commission to improve service effectiveness, which represents an increase in services provided to the public.

Section 31.11(c) proposes that annual adjustments be limited to a maximum 10% decrease from year to year for both the urban and rural providers to provide funding stability. The purpose of this change is to assist public transportation providers in planning for future year funding allocations and enabling continuity of service. The department further proposes that consideration be made to account for changes in the relative purchasing power of the amounts from year-to-year. This intent is accomplished by amending the provisions concerning allocation of excess funds to include adjustment due to changes in purchasing power as an eligible consideration. The department also proposes to reset the base year to the state fiscal biennium 2006 - 2007.

Section 31.36, the Title 49 USC 5311 Grant Program, proposes changes to the current formula and also reflects the federal statutory requirement that the department consult with intercity bus service providers.

Subsections 31.36(g)(2)(A) and (B) propose that federal funds for the rural providers be allocated based on a figure that represents 75% population and 25% land area, relative to all other rural public transportation providers and on an equally weighted formula of three criteria: local funds per operating expense, ridership per revenue mile and revenue miles per operating expense. The figure that represents 75% population and 25% land area is intended to capture the need of the transit operator, and application of the equally weighted criteria is intended to capture performance of the transit operator. The new provisions propose that the allocation of transportation funding will be based on 80% need and 20% performance for fiscal years 2007 and 2008; and 65% need and 35% performance for fiscal year 2009 and each fiscal year thereafter. This change would increase the emphasis on performance, and reward providers who improve the efficiency or effectiveness of their service. The department further proposes changes to the performance criteria for the rural areas to match the formula proposed for state rural funding allocation. Currently, the formula considers local funds per operating expense, operating expenses per mile, and operating expense per passenger. The department proposes to change the measure of operating expense per passenger to passengers per revenue mile, and the measure of operating expense per mile to revenue miles per operating expense. The relative weights of the three criteria will not change, but will remain at one third each for the following criteria: local funds per operating expense, ridership per revenue mile and revenue miles per operating expense. The proposed provisions would provide a measure of service effectiveness. It is an acknowledged goal of the commission to improve service effectiveness, which represents an increase in services provided to the public.

Section 31.36(g)(3) proposes that consideration be made to account for changes in the relative purchasing power of the amounts from year-to-year. The provisions concerning the allocation of excess funds are revised to include consideration of adjustments if changes in purchasing power occur. The department also proposes to change the funding baseline from a particular fiscal year to a set level of funding for purposes of determining if additional funds exist. The impact of the change is to increase the baseline by $7,000,000, and move allocation levels closer to the amount determined by the allocation formula, considering both transportation provider need and performance.

Section 31.36(g)(1)(B) proposes amendments concerning intercity bus regulation in order to reflect changes to federal statutes, which now require the state to consult with the intercity bus service providers under certain circumstances. The changes were enacted in "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users," known as "SAFETEA-LU."

The Public Transportation Advisory Committee (PTAC) has met numerous times to discuss the changes to the existing formulas and rules, and to make recommendations to the commission. Four PTAC committee members represent a diverse cross-section of public transportation providers; three members represent a diverse cross-section of public transportation users; three members represent the general public; and one member is designated to have experience in the transportation of clients of health and human services programs. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

PTAC's duties include advising the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds, and commenting on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption.

PTAC met on March 9, 2006, and by motion recommended to the commission all of the above amendments in the allocation funding formula.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Eric L. Gleason, Director, Public Transportation Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Gleason has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a more fair and equitable allocation of public transportation funding as administered by these subchapters, as well as more fully implementing current state and federal law to improve the efficiency, effectiveness and safety of public transportation providers and to increase the availability of transportation services to the public. There will be no adverse economic effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 1:30 p.m. on Thursday, May 4, 2006, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 1:00 p.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Eric Gleason, Public Transportation Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on May 15, 2006.

SUBCHAPTER B. STATE PROGRAMS

43 TAC §31.11

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §456.022, which requires the commission to adopt rules establishing a formula allocating funds among eligible public transportation providers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 456.

§31.11. Formula Program.

(a) Purpose. Transportation Code, Chapter 456 requires the commission to allocate, at the beginning of each fiscal biennium, certain [~~appropriated~~] amounts appropriated for public transportation [~~from the public transportation fund~~]. This section sets out the policies, procedures, and requirements for that allocation.

(b) Formula allocation. At the beginning of each state fiscal biennium, an amount equal to the amount appropriated from all sources to the commission by the legislature for that biennium for public transportation, other than federal funds and amounts specifically appropriated for coordination, technical support, or other costs of administration, will be allocated to urban and rural transit districts [~~designated recipients~~]. The commission will allocate [~~those funds between small urban and rural providers, with~~] 35% of the funding to urban transit districts [~~allocated to small urban providers~~] and 65% of the funding to rural transit districts [~~allocated to rural providers~~].

(1) Urban funds available under this section will be allocated to urban transit districts [~~municipalities~~] that are designated recipients or transit providers in urbanized areas that are not served by an authority and to designated recipients that received state transit funding during the fiscal biennium ending August 31, 1997, that are not served by an authority but are located in urbanized areas that include one or more authorities. Any local governmental entity having the power to operate or maintain a public transportation system, except an authority, may receive formula program funds. The commission will distribute the money in the following manner.

(A) Urban funds will be divided into two tiers. Tier one will include urban transit districts that restrict transit eligibility for all public transportation services to the elderly and persons with disabilities. Funding available in tier one is calculated by multiplying the available urban funding by the population of elderly and persons with disabilities in tier one providers, divided by the service eligible population of urbanized areas receiving funding under this subchapter. Tier two will include urban transit districts that provide any service to the general population. The funds for tier two will be the remaining balance of the available funds after the funds for tier one have been allocated. Funds within each tier will be allocated to urban transit districts based on subparagraphs (B) and (C) of this paragraph.

(B) [~~(A)~~] The need based allocation is determined as follows: 80% of urban funds will be awarded for 2007, 65% for the 2008 - 2009 biennium, and 50% for each biennium thereafter, based on [~~Eighty percent will be awarded giving consideration to~~] population by using the latest census data available from, and as defined by, the U.S. Census Bureau for each urbanized area relative to the sum of all urbanized areas. Any urban transit district [~~provider~~] whose urbanized area population is 200,000 or greater will have the population adjusted to reflect a population level of 199,999; except that any urban transit district receiving funds in tier one, as described in subparagraph (A) of this paragraph, will have the population adjusted to reflect a population level of 199,999, or the urbanized area population of the place as defined by the U.S. Census Bureau, whichever is less.

(C) [~~(B)~~] The performance based allocation will be 20% for fiscal year 2007, 35% for the 2008 - 2009 biennium, and 50% for each biennium thereafter. An urban transit district is eligible for funding under this subparagraph if it is in good standing with the department and has no deficiencies and no findings of noncompliance. [~~If the urban transit district is in good standing with the department and has no deficiencies and no findings of noncompliance, 20% will be awarded under clause (i) or (ii) of this subparagraph as follows.~~]

[~~(i)~~ ~~The commission, using all or a portion of the funds, may award funding to address strategic priorities for the urbanized public transportation program. These amounts are not subject to the transition funding allocation process described in subsection (c) of this section in succeeding fiscal years, and will be awarded on a competitive basis unless they are needed to compensate for funding anomalies arising under this subsection.~~]

[~~(ii)~~] The commission will award the funding based on the following weighted criteria: 30% for local funds per operating expense, 20% for ridership per capita, 30% for ridership per revenue mile, and 20% for revenue miles per operating expense [~~by giving equal consideration to local funds per operating expense, vehicle revenue miles per capita, and ridership per capita. Any urban provider whose urbanized area population is 200,000 or greater will have the aforementioned criteria adjusted on a pro rata basis to reflect a population level of 199,999~~]. These criteria may be calculated using the urban transit district's [~~subrecipient's~~] annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(2) Rural funds available under this section will be allocated to rural transit districts in nonurbanized areas. Any eligible recipient may receive formula program funds. The funding will be allocated to rural transit districts based upon need and performance as described in subparagraphs (A) and (B) of this paragraph [~~Of the money allocated under this paragraph, the commission will distribute the money in the following manner~~].

(A) The need based allocation is determined as follows: 80% [~~Eighty percent~~] will be awarded for fiscal years 2007 and 2008, and 65% for each fiscal year thereafter giving consideration to population weighted at 75% and on land area weighted at 25% [~~by using the latest census data available from, and as defined by, the U.S. Census Bureau~~] for each nonurbanized area relative to the sum of all nonurbanized areas.

(B) The performance based allocation will be 20% for fiscal years 2007 and 2008, and 35% for each biennium thereafter. A rural transit district is eligible for funding under this subparagraph if it is in good standing with the department and has no deficiencies and no findings of noncompliance [~~If the transit district is in good standing with the department and has no deficiencies and no findings of noncompliance, 20% will be awarded under clause (i) or (ii) of this subparagraph as follows~~].

[~~(i)~~ ~~The commission, using all or a portion of the funds, may award funding to address strategic priorities for the nonurbanized public transportation program. These amounts are not subject to the transition funding allocation process described in subsection (c) of this section in succeeding fiscal years, and will be awarded on a competitive basis unless they are needed to compensate for funding anomalies arising under this subsection.~~]

[~~(ii)~~] The commission will award the funding by giving equal consideration to local funds per operating expense, ridership per revenue mile, and revenue miles per operating expense [~~operating expenses per mile and operating expense per passenger~~]. These criteria may be calculated using the rural transit district's [~~subrecipient's~~] annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(3) Funds allocated under this section and any local funds may be used for any transit-related activity except that a designated recipient not included in a transit authority but located in an urbanized area that includes one or more transit authorities may only use funds to provide:

(A) 65% of the local share requirement for federally financed projects for capital improvements;

(B) 50% of the local share requirement for projects for operating expenses and administrative costs;

(C) 50% of the total cost of a public transportation capital improvement, if the designated recipient certifies that federal money is unavailable for the proposed project and the commission finds that the proposed project is vitally important to the development of public transportation in the state; and

(D) 65% of the local share requirement for federally financed planning activities.

(c) Funding stability [~~Transition~~]. Subject to available appropriation, [~~Each agency will have five years to transition to full formula allocation and during the five years after the first application of new census data from the United States Census Bureau, the allocations under subsection (b)(1) and (2) of this section will be adjusted to avoid extreme short-term disruptions in the continuity of funding. During this time~~] no award to an urban or rural [a] transit district under this section will be less than 90% of the award to that transit district for the previous fiscal year[~~, except that fiscal year 2004 will be used as the base year when calculating allocations for fiscal year 2006 allocation of funds, after which succeeding allocations will be based on previous fiscal years~~]. All allocations under subsection (b)(1) and (2) of this section are subject to revision to comply with this standard. If available funding exceeds $57,482,135 [~~the allocations allocated in fiscal years 2004 and 2005~~], additional funding will be awarded by the commission on a pro rata basis, competitively, or a combination of both. Consideration for the award of these additional funds may include, but is not limited to, coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, adjustment for reductions in purchasing power, and reductions in air pollution. These additional awards are not subject to the [~~transition~~] funding stability allocation process in succeeding fiscal years.

(d) Change in service area. If part of an urban or rural [a] transit district's service area is changed due to declaration by the United States Census Bureau, or if the service area is otherwise altered, the department and the urban or rural transit district [~~subrecipient~~] shall negotiate an appropriate adjustment in the funding awarded to that urban or rural transit district [~~subrecipient~~] for that funding year or any subsequent year, as appropriate. This negotiated adjustment is not subject to the minimum and maximum standards set forth in subsection (c) of this section.

(e) - (h) (No change.)

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

Filed with the Office of the Secretary of State on March 31, 2006.

TRD-200601963

Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 463-8683

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SUBCHAPTER C. FEDERAL PROGRAMS

43 TAC §31.36

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §456.022, which requires the commission to adopt rules establishing a formula allocating funds among eligible public transportation providers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 456.

§31.36. Section 5311 Grant Program.

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

(g) Allocation of funds. As part of its administration of the Section 5311 program, the department is charged with ensuring that there is a fair and equitable distribution of program funds within the state (FTA Circular 9040.1E, or its latest version). The department will allocate Section 5311 funds to local subrecipients in the following manner.

(1) Reserve. Unless the governor certifies to the Secretary of the United States Department of Transportation that the intercity bus service needs of the state are being adequately met, the department will reserve not less than 15% of the Section 5311 federal apportionment for the development and support of intercity bus transportation to be allocated under subsection (i) of this section. If it is determined that all or a portion of the set-aside monies is not required for intercity bus service, those funds will be applied to the formula apportionment process described in paragraph (2) of this subsection. Procedures for determining if a certification of adequacy is warranted are as follows.

(A) (No change.)

(B) The department will consult with affected intercity bus service providers.

(C) [~~(B)~~] The department will consult with other state agencies that have jurisdiction with respect to intercity bus regulation and seek their recommendations as to the adequacy of current service.

(D) [~~(C)~~] Based on the findings of subparagraphs (A), [~~and~~](B), and (C) of this paragraph, the commission may certify or recommend that the governor certify to the adequacy of intercity bus service.

(2) Remaining balance allocation. Except as provided in paragraph (1) of this subsection, the balance of the annual Section 5311 federal apportionment, plus the remaining balance of previous Section 5311 federal apportionments, and any state funds appropriated specifically for the purpose of funding nonurbanized public transportation services will be allocated to transit providers as described in subparagraphs (A) and (B) of this paragraph [~~in the following manner~~].

(A) The need based allocation is determined as follows: 80% [~~Eighty percent~~] will be awarded for fiscal years 2007 and 2008, and 65% for each fiscal year thereafter giving consideration to population weighted at 75% and on land area weighted at 25% by using the latest census data available from, and as defined by, the U.S. Census Bureau for each nonurbanized area relative to the sum of all nonurbanized areas.

(B) The performance based allocation will be 20% for fiscal years 2007 and 2008, and 35% for each fiscal year thereafter. The subrecipient is eligible for funding under this subparagraph if it is in good standing with the department and has no deficiencies and no findings of noncompliance [~~If the transit district is in good standing with the department and has no deficiencies and no findings of noncompliance, 20% will be awarded under clause (i) or (ii) of this subparagraph as follows~~].

[~~(i)~~ ~~The commission, using all or a portion of the funds, may award funding to address strategic priorities for the nonurbanized public transportation program. These amounts are not subject to the transition funding allocation process described in paragraph (3) of this subsection in succeeding fiscal years, and will be awarded on a competitive basis unless they are needed to compensate for funding anomalies arising under this subsection.~~]

[~~(ii)~~] The commission will award the funding by giving equal consideration to local funds per operating expense, ridership per revenue mile, and revenue miles per operating expense [~~operating expenses per mile and operating expense per passenger~~]. These criteria may be calculated using the subrecipient's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(3) Funding stability [~~Transition~~]. Subject to available appropriation, [~~Each agency will have five years to transition to full formula allocation and during the five years after the first application of new census data from the United States Census Bureau, the allocations under paragraphs (1) and (2) of this subsection will be adjusted to avoid extreme short-term disruptions in the continuity of funding. During this time~~] no award to a transit district under this section will be less than 90% of the award to that transit district for the previous fiscal year[~~, except that fiscal year 2004 will be used as the base year when calculating allocations for the next allocation of funds, after which succeeding allocations will be based on previous fiscal years~~]. All allocations under paragraphs (1) and (2) of this subsection are subject to revision to comply with this standard. If available funding exceeds $20,104,352 [~~the allocations allocated in fiscal year 2004~~], additional funding will be awarded by the commission on a pro rata basis, competitively, or a combination of both. Consideration for the award of these additional funds may include, but is not limited to, coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, adjustment for reductions in purchasing power, and reductions in air pollution. These additional awards are not subject to the [~~transition~~] funding stability allocation process in succeeding fiscal years.

(4) - (5) (No change.)

(h) - (i) (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 March 31, 2006.

TRD-200601964

Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: May 14, 2006
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.9

The Texas Ethics Commission withdraws the proposed amendment to §18.9 which appeared in the February 17, 2006, issue of the *Texas Register* (31 TexReg 947).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601892
David A. Reisman
Executive Director
Texas Ethics Commission
Effective date: March 29, 2006
For further information, please call: (512) 463-5800

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 17. CAMPUS PLANNING

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §17.3

The Texas Higher Education Coordinating Board withdraws the proposed amendment to §17.3 which appeared in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1400).

Filed with the Office of the Secretary of State on March 28, 2006.

TRD-200601846
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: March 28, 2006
For further information, please call: (512) 427-6114

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SUBCHAPTER C. RULES APPLYING TO ALL PROJECTS

19 TAC §17.21

The Texas Higher Education Coordinating Board withdraws the proposed amendment to §17.21 which appeared in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1401).

Filed with the Office of the Secretary of State on March 28, 2006.

TRD-200601847
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: March 28, 2006
For further information, please call: (512) 427-6114

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SUBCHAPTER F. RULES APPLYING TO REAL PROPERTY ACQUISITION PROJECTS

19 TAC §17.51, §17.52

The Texas Higher Education Coordinating Board withdraws the proposed amendment to §17.51 and §17.52 which appeared in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1402).

Filed with the Office of the Secretary of State on March 28, 2006.

TRD-200601848
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: March 28, 2006
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

SUBCHAPTER A. SEX OFFENDER TREATMENT PROVIDER REGISTRY

22 TAC §§810.1 - 810.5, 810.7 - 810.9

The Council on Sex Offender Treatment withdraws the proposed repeals to §§810.1 - 810.5, 810.7 - 810.9 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601897

Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §§810.1 - 810.5, 810.7 - 810.9

The Council on Sex Offender Treatment withdraws proposed new §§810.1 - 810.5, 810.7 - 810.9 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601898
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER B. CRIMINAL BACKGROUND CHECK

22 TAC §§810.31 - 810.34

The Council on Sex Offender Treatment withdraws the proposed repeal to §§810.31 - 810.34 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601899
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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22 TAC §§810.31 - 810.34

The Council on Sex Offender Treatment withdraws proposed new §§810.31 - 810.34 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601900
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER C. STANDARDS OF PRACTICE

22 TAC §§810.61 - 810.67

The Council on Sex Offender Treatment withdraws the proposed repeal to §§810.61 - 810.67 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601901
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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22 TAC §§810.61 - 810.67

The Council on Sex Offender Treatment withdraws proposed new §§810.61 - 810.67 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601902
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER D. CODE OF PROFESSIONAL ETHICS

22 TAC §810.91, §810.92

The Council on Sex Offender Treatment withdraws the proposed repeal to §810.91 and §810.92 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601903
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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22 TAC §810.91, §810.92

The Council on Sex Offender Treatment withdraws proposed new §810.91 and §810.92 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601904
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER E. GENERAL PROVISIONS

22 TAC §810.122

The Council on Sex Offender Treatment withdraws the proposed repeal to §810.122 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601905
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER E. CIVIL COMMITMENT GENERAL PROVISIONS

22 TAC §810.122

The Council on Sex Offender Treatment withdraws proposed new §810.122 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601906
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER F. CIVIL COMMITMENT

22 TAC §§810.151 - 810.153

The Council on Sex Offender Treatment withdraws the proposed repeal to §§810.151 - 810.153 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601907
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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22 TAC §§810.151 - 810.153

The Council on Sex Offender Treatment withdraws proposed new §§810.151 - 810.153 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601908
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER G. CIVIL COMMITMENT CASE MANAGER AND TREATMENT PROVIDER DUTIES AND RESPONSIBILITIES

22 TAC §810.182, §810.183

The Council on Sex Offender Treatment withdraws the proposed repeal to §810.182 and §810.183 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601909
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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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

The Council on Sex Offender Treatment withdraws proposed new §810.182 and §810.183 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601910
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER H. CIVIL COMMITMENT REVIEW

22 TAC §810.211

The Council on Sex Offender Treatment withdraws the proposed repeal to §810.211 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601911

Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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22 TAC §810.211

The Council on Sex Offender Treatment withdraws proposed new §810.211 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601912
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER I. PETITION FOR RELEASE

22 TAC §810.241, §810.242

The Council on Sex Offender Treatment withdraws the proposed repeal to §810.241 and §810.242 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601913
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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22 TAC §810.241, §810.242

The Council on Sex Offender Treatment withdraws proposed new §810.241 and §810.242 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601914
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER J. MISCELLANEOUS PROVISIONS

22 TAC §810.271, §810.272

The Council on Sex Offender Treatment withdraws the proposed repeal to §810.271 and §810.272 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601915
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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22 TAC §810.271, §810.272

The Council on Sex Offender Treatment withdraws proposed new §810.271 and §810.272 which appeared in the January 13, 2006, issue of the *Texas Register* (31 TexReg 234).

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601916
Walter J. Meyer, M.D.
Chair
Council on Sex Offender Treatment
Effective date: March 29, 2006
For further information, please call: (512) 458-7111 x6972

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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 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.11

The Texas Ethics Commission adopts the repeal of §18.11, which defines "substantial compliance" regarding corrected reports. The repeal is adopted without changes to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 947).

Section 18.11 defines substantial compliance as reports which contain errors which are minor in context. Section 18.11 is no longer needed because it was superseded by statutory changes. H.B. 1800, 79th Legislature, Regular Session, amended chapter 571 of the Government Code to define "substantial compliance."

No comments were received regarding adoption of the repeal.

The repeal of the rule is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601889
David A. Reisman
Executive Director
Texas Ethics Commission
Effective date: April 18, 2006
Proposal publication date: February 17, 2006
For further information, please call: (512) 463-5800

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CHAPTER 24. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES APPLICABLE TO CORPORATIONS AND LABOR ORGANIZATIONS

1 TAC §24.13

The Texas Ethics Commission adopts the amendment to §24.13, relating to the reporting requirements of certain expenditures by a general-purpose committee by deleting subsection (d). The amendment is adopted without changes to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 948).

Section 24.13 requires a report filed by a general-purpose committee to identify expenditures made by a corporation. Section 24.13(d) excludes from the reporting requirement certain corporate expenditures. Section 24.13(d) was superseded by statutory changes made by H.B. 1606, 78th Legislature, Regular Session. The bill repealed §253.100(d) of the Election Code, which is mirrored in Ethics Commission Rule §24.13(d).

No comments were received regarding adoption of the repeal.

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

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

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601890
David A. Reisman
Executive Director
Texas Ethics Commission
Effective date: April 18, 2006
Proposal publication date: February 17, 2006
For further information, please call: (512) 463-5800

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CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission adopts an amendment to §50.1, to set the legislative per diem as required by the Texas Constitution, Article III, §24a. This section sets the per diem for members of the legislature and the lieutenant governor at $132 for each day during the regular session and any special session. The amendment is adopted without changes to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 949).

No comments were received regarding adoption of the amendment.

The amendment of the rule is adopted under the Texas Constitution, Article III, §24a, and the Government Code, Chapter 571, §571.062.

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

Filed with the Office of the Secretary of State on March 29, 2006.

TRD-200601891
David A. Reisman
Executive Director
Texas Ethics Commission
Effective date: April 18, 2006
Proposal publication date: February 17, 2006
For further information, please call: (512) 463-5800

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES
SUBCHAPTER N. FOOD AND FIBERS RESEARCH GRANT PROGRAM RULES

4 TAC §§1.920 - 1.928

The Texas Department of Agriculture (the department) adopts new Title 4, Part 1, Chapter 1, Subchapter N, §§1.920 - 1.928, concerning the department's Food and Fibers Research Grant Program (Program) rules, without changes to the proposal published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1129).

The new sections are adopted to establish operating rules for the Program, a grant program that provides funding for surveys, research, and investigations relating to the use of cotton fiber, cottonseed, oilseed products, other products of the cotton plant, wool, mohair, and other textile products, thereby providing increased research benefits for the food and fibers sector of the Texas economy. New §1.920 provides definitions to be used in the new subchapter. New §1.921 provides a statement of purpose of the Program. New §1.922 provides for administration of the program. New §1.923 provides the application and selection process for the program. New §1.924 provides the make-up and operation of the Food and Fibers Research Council. New §1.925 provides primary research areas eligible for funding under the program. New §1.926 provides proposal submission requirements. New §1.927 provides the process for proposal review and selection. New §1.928 provides reporting requirements for grant recipients.

No comments were received on the proposal.

The new sections are adopted under the Texas Agriculture Code (the Code), §42.003, which authorizes the department to adopt rules necessary to administer the Food and Fibers Research Grant Program.

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

Filed with the Office of the Secretary of State on March 30, 2006.

TRD-200601925
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: April 19, 2006
Proposal publication date: February 24, 2006
For further information, please call: (512) 463-4075

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PART 11. TEXAS FOOD AND FIBERS COMMISSION

CHAPTER 201. COMMISSION ADMINISTRATION

4 TAC §§201.1 - 201.9

The Texas Department of Agriculture (the department) adopts the repeal of Title 4, Part 11, Chapter 201, §§201.1 - 201.9, concerning Commission Administration, without changes to the proposal published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1134).

The Texas Food and Fibers Commission (Commission) was abolished effective January 1, 2006, by the enactment of House Bill 373, 79th Regular Session, 2005 (HB 373). All powers and duties of the Commission were transferred to the newly established Food and Fibers Research Council including the authority to implement the Food and Fibers Research Grant Program. The grant program is now administered by the department, and the department has the sole rulemaking authority under the new law. The new law also restructured the grant program and the current rules are no longer needed. New program rules for the Food and Fibers Research Grant Program have been adopted by the department and are published in the adopted rules section of this edition of the *Texas Register*. The repeal is adopted to eliminate unnecessary rules.

No comments were received on the proposal.

The repeal is adopted under the Texas Agriculture Code, §42.003, which provides the department with the authority to adopt rules necessary for the administration of the Food and Fibers Research Grant Program.

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

Filed with the Office of the Secretary of State on March 30, 2006.

TRD-200601926
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Texas Food and Fibers Commission
Effective date: April 19, 2006
Proposal publication date: February 24, 2006
For further information, please call: (512) 463-4075

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CHAPTER 202. FOOD PROTEIN AND NATURAL FIBERS ADVISORY COMMITTEES

4 TAC §§202.1 - 202.3

The Texas Department of Agriculture (the department) adopts the repeal of Title 4, Part 11, Chapter 202, §§202.1 - 202.3, concerning Food Protein and Natural Fibers Advisory Committees, without changes to the proposal published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1135).

The Texas Food and Fibers Commission (Commission) was abolished effective January 1, 2006, by the enactment of House Bill 373, 79th Regular Session, 2005 (HB 373). All powers and duties of the Commission were transferred to the newly established Food and Fibers Research Council including the authority to implement the Food and Fibers Research Grant Program. The grant program is now administered by the department, and the department has the sole rulemaking authority under the new law. The new law also restructured the grant program and the current rules are no longer needed. New program rules for the Food and Fibers Research Grant Program have been adopted by the department and are published in the adopted rules section of this edition of the *Texas Register*. The repeal is adopted to eliminate unnecessary rules.

No comments were received on the proposal.

The repeal is adopted under the Texas Agriculture Code, §42.003, which provides the department with the authority to adopt rules necessary for the administration of the Food and Fibers Research Grant Program.

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

Filed with the Office of the Secretary of State on March 30, 2006.

TRD-200601927
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Texas Food and Fibers Commission
Effective date: April 19, 2006
Proposal publication date: February 24, 2006
For further information, please call: (512) 463-4075

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CHAPTER 203. PRIMARY RESEARCH AREAS

4 TAC §§203.1 - 203.3

The Texas Department of Agriculture (the department) adopts the repeal of Title 4, Part 11, Chapter 203, §§203.1 - 203.3 concerning Primary Research Areas, without changes to the proposal published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1135). The Texas Food and Fibers Commission (Commission) was abolished effective January 1, 2006, by the enactment of House Bill 373, 79th Regular Session, 2005 (HB 373). All powers and duties of the Commission were transferred to the newly established Food and Fibers Research Council including the authority to implement the Food and Fibers Research Grant Program. The grant program is now administered by the department, and the department has the sole rulemaking authority under the new law. The new law also restructured the grant program and the current rules are no longer needed. New program rules for the Food and Fibers Research Grant Program have been adopted by the department and are published in the adopted rules section of this edition of the *Texas Register*. The repeal is adopted to eliminate unnecessary rules.

No comments were received on the proposal.

The repeal is adopted under the Texas Agriculture Code, §42.003, which provides the department with the authority to adopt rules necessary for the administration of the Food and Fibers Research Grant Program.

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

Filed with the Office of the Secretary of State on March 30, 2006.

TRD-200601928
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Texas Food and Fibers Commission
Effective date: April 19, 2006
Proposal publication date: February 24, 2006
For further information, please call: (512) 463-4075

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CHAPTER 204. PRE-PROPOSAL SUBMISSION

4 TAC §§204.1 - 204.5

The Texas Department of Agriculture (the department) adopts the repeal of Title 4, Part 11, Chapter 204, §§204.1 - 204.5 concerning Pre- Proposal Submission, without changes to the proposal published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1136). The Texas Food and Fibers Commission (Commission) was abolished effective January 1, 2006, by the enactment of House Bill 373, 79th Regular Session, 2005 (HB 373). All powers and duties of the Commission were transferred to the newly established Food and Fibers Research Council, including the authority to implement the Food and Fibers Research Grant Program. The grant program is now administered by the department, and the department has the sole rulemaking authority under the new law. The new law also restructured the grant program and the current rules are no longer needed. New program rules for the Food and Fibers Research Grant Program have been adopted by the department and are published in the adopted rules section of this edition of the *Texas Register*. The repeal is adopted to eliminate unnecessary rules.

No comments were received on the proposal.

The repeal is adopted under the Texas Agriculture Code, §42,003, which provides the department with the authority to adopt rules necessary for the administration of the Food and Fibers Research Grant Program.

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

Filed with the Office of the Secretary of State on March 30, 2006.

TRD-200601929
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Texas Food and Fibers Commission
Effective date: April 19, 2006
Proposal publication date: February 24, 2006
For further information, please call: (512) 463-4075

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CHAPTER 205. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

4 TAC §205.1

The Texas Department of Agriculture (the department) proposes the repeal of Title 4, Part 11, Chapter 205, §205.1 concerning Historically Underutilized Business Program, , without changes to the proposal published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1135). The Texas Food and Fibers Commission (Commission) was abolished effective January 1, 2006, by the enactment of House Bill 373, 79th Regular Session, 2005 (HB 373). All powers and duties of the Commission were transferred to the newly established Food and Fibers Research Council including the authority to implement the Food and Fibers Research Grant Program. The grant program is now administered by the department, and the department has the sole rulemaking authority under the new law. The new law also restructured the grant program and the current rules are no longer needed. New program rules for the Food and Fibers Research Grant Program have been adopted by the department and are published in the adopted rules section of this edition of the *Texas Register*. The repeal is adopted to eliminate unnecessary rules.

No comments were received on the proposal.

The repeal is proposed under the Texas Agriculture Code, §42.003, which provides the department with the authority to adopt rules necessary for the administration of the Food and Fibers Research Grant Program.

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

Filed with the Office of the Secretary of State on March 30, 2006.

TRD-200601930

Dolores Alvarado Hibbs

Deputy General Counsel, Texas Department of Agriculture

Effective date: April 19, 2006

Proposal publication date: February 24, 2006

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

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §402.600

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.600 relating to Bingo Reports with changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 631).

The amendments include less restrictive language with regard to the payment of prize fees or rental tax due, and add reporting requirements for certain licensees. The only change from the proposed version of the rule amendment is a correction to a legal citation in subsection (l) of the rule.

The Commission received only favorable comments during the comment period, both in writing and in person at the public hearing held on February 8, 2006, at the Commission Headquarters located at 611 E. 6th Street, Austin, Texas.

The amendments are adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The amendments implement Occupations Code, Chapter 2001.

§402.600. Bingo Reports.

(a) On or before the 15th of the month prior to the end of the calendar quarter, the Commission will mail the "Texas Bingo Conductor's Quarterly Reports", "Texas Lessor Quarterly Reports", and "Manufacturer/Distributor Quarterly Reports and Supplements" to its licensees.

(b) Quarterly reports and payments due to be submitted on a date occurring on a Saturday, Sunday, or legal holiday will be due the next business day. The report will be deemed filed when deposited with the United States Postal Service or private mail service, postage or delivery charges paid and the postmark or shipping date indicated on the envelope is the date of filing.

(c) Quarterly Report for information relating to the conduct of bingo games.

(1) An authorized organization holding an annual license, temporary license, or a temporary authorization to conduct bingo must file on a form prescribed by the Commission or in an electronic format prescribed by the Commission a quarterly report for financial and statistical information relating to the conduct of bingo games. The report must be filed with the Commission on or before the 25th day of the month following the end of the calendar quarter even if there were no games conducted during that quarter.

(2) The report must be filed under oath attesting to the information being true and correct. Each officer and director is responsible for knowing the contents of the report. The person signing the report must promptly provide a copy of the report to such officer and director upon his/her request.

(d) Quarterly report for information relating to the lease of bingo premises.

(1) A commercial lessor holding a license to lease bingo premises must file on a form prescribed by the Commission or in an electronic format prescribed by the Commission a quarterly report stating the rental income received. The report must be filed with the Commission on or before the 25th day of the month following the end of the calendar quarter regardless of whether income was received.

(2) The report must be filed under oath attesting to the information being true and correct. Each officer and director is responsible for knowing the contents of the report. The person signing the report must promptly provide a copy of the report to such officer and director upon his/her request.

(e) Quarterly report for information relating to a manufacturer or distributor license.

(1) A manufacturer or distributor shall file a report on a form prescribed by the Commission or in an electronic format prescribed by the Commission, reflecting each sale or lease of bingo equipment, and to the total sales of cards, sheets, pads and instant bingo to a person or organization in this state or for use in this state.

(2) The report shall be filed with regard to each calendar quarter and is due on or before the last day of the month following the end of the quarter. The report is due to the Commission regardless of whether sales or lease of bingo equipment occurred during the quarter.

(3) The report must be filed under oath attesting to the information being true and correct.

(4) The Commission will deny a renewal application or revoke a license of a manufacturer or distributor where the licensee has failed to timely file with the Commission the required reports three times within four consecutive quarters.

(f) A manufacturer or distributor shall use the eleven digit taxpayer numbers on file with the Commission when submitting information relating to the sale or lease of bingo equipment, sales of cards, sheets, pads and instant bingo. If six or more taxpayer numbers are incorrect on the report, the Commission will return the report to the manufacturer or distributor for correction. If five or less taxpayer numbers are incorrect, the Commission will notify the licensee in writing of the taxpayer numbers that were changed and the correct numbers to be used in the future.

(g) Quarterly report for information relating to a system service provider license.

(1) A system service provider shall file a report on a form prescribed by the Commission or in an electronic format prescribed by the Commission, reflecting each sale or lease of an automated bingo system to a person or organization in this state or for use in this state.

(2) The report shall be filed with regard to each calendar quarter and is due on or before the last day of the month following the end of the quarter. The report is due to the Commission regardless of whether a sale or lease of an automated bingo system occurred during the quarter.

(3) The report must be filed under oath attesting to the information being true and correct.

(4) The Commission will deny a renewal application or revoke a license of a system service provider where the licensee has failed to timely file with the Commission the required reports three times within four consecutive quarters.

(h) A system service provider shall use the eleven digit taxpayer numbers on file with the Commission when submitting information relating to the sale or lease of an automated bingo system. If six or more taxpayer numbers are incorrect on the report, the Commission will return the report to the system provider for correction. If five or less taxpayer numbers are incorrect, the Commission will notify the licensee in writing of the taxpayer numbers that were changed and the correct numbers to be used in the future.

(i) Failure to receive forms. The failure of a licensee to receive forms from the Commission does not relieve the licensee from the requirement of filing reports and remitting prize fees or taxes as applicable on a timely basis.

(j) If a licensee fails to file a quarterly report as required by Occupations Code, §2001.504, the Charitable Bingo Operations Division will mail to the licensee a letter stating the quarterly report has not been filed. The applicable penalty and/or interest is due on the amount of prize fee or rental tax that was not filed timely. The licensee must file a report with the Commission even if no games were conducted or no rental tax collected.

(k) Incorrect calculation of "Texas Bingo Conductor's Quarterly Report". If the total receipts and total expenses do not total correctly, the Commission will mail the conductor a letter, with a copy of the adjusted report, stating an adjustment has been made to the quarterly report. If the adjusted quarterly report is correct, the licensee will maintain the copy in its file and no further action is required. If the licensee does not agree with the adjusted quarterly report, an amended quarterly report reflecting the correct data must be submitted to the Commission by the licensee.

(l) The Commission will deny a renewal application for a license to conduct bingo or a license to lease bingo premises or revoke a license to conduct bingo or a license to lease bingo premises if the licensee has failed to pay timely the prize fee or rental tax due three times within four consecutive quarters and a final jeopardy determination has been made by the commission for three of the four consecutive quarters in accordance with Occupations Code Sections 2001.510 and 2001.511.

(m) Extensions.

(1) Filing extension because of natural disaster.

(A) The Director will grant to a licensee who has been identified as a victim of a natural disaster an extension of not more than 90 days to file a quarterly report or pay rental tax or prize fees provided the licensee has filed a timely request for an extension. In determining the natural disaster victims, the Commission shall recognize the counties that have been identified by the Comptroller of Public Accounts.

(B) The person owing the quarterly report, rental tax or prize fees must file a written request for an extension at any time before the expiration of five working days after the original due date in order to obtain an extension.

(C) If an extension under this paragraph is granted, interest on the unpaid rental tax or prize fee does not begin to accrue until the day after the day on which the extension expires, and rental tax, prize fees, and penalties are assessed and determined as though the last day of the extension were the original due date.

(2) Filing extension for reasons other than natural disaster.

(A) The Director may grant an extension of not more than 30 days for the filing of a quarterly report. Before a request for extension may be granted, a written request setting out the reasons or grounds for an extension and 90% of the prize fees or rental tax estimated to be due must be received by the Commission postmarked on or before the due date of the quarterly report.

(B) The granting of a request is within the discretion of the Director and the licensee will be notified in five working days of the request of the decision of the Director.

(C) If the request is denied, there will be no penalty assessed if the return is filed and remaining prize fee or rental tax is paid not later than ten days from the date of the denial of the request of the extension.

(3) A request postmarked after the due date for the filing of a request will not be considered.

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 March 29, 2006.

TRD-200601894

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: April 18, 2006
Proposal publication date: February 3, 2006
For further information, please call: (512) 344-5113

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TITLE 22. EXAMINING BOARDS

PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER A. LICENSING

22 TAC §851.28

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to §851.28, concerning reinstatement of a lapsed, suspended or expired license, without changes to the proposed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8620) and will not be republished. The section defines a *lapsed* license and procedures for renewing it as well as the reinstatement of an expired or suspended license. The Geoscience Practice Act adopted in 2003 allows for the Board to create rules regarding the duration and expiration of a professional geoscientist license.

The amendment adds language to 22 TAC §851.28 to clarify what a *lapsed* license is and how it can be renewed to become current. It also stipulates the requirements for bringing a permanently expired or suspended license to a current status.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Occupations Code, §1002.151 and §1002.262, which authorize the Board to adopt rules regarding license expiration and duration.

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 March 31, 2006.

TRD-200601968
Frank Knapp
Assistant Attorney General
Texas Board of Professional Geoscientists
Effective date: September 1, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 936-4402

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22 TAC §851.30

The Texas Board of Professional Geoscientists (TBPG) adopts new rule §851.30, concerning the registration of firms. The new rule is adopted with one change to the proposed text as published in the January 20, 2006, issue of the *Texas Register* (31 TexReg 371).

The adopted new rule outlines procedures required for firms to be registered to practice geoscience in the state. The new rule would allow a firm that employs a full-time professional geoscientist, P.G., to be recognized as a registered firm eligible to perform geoscientific activities before the public in Texas. Registered firms will be responsible for any licensing and renewal fees and procedures required as per the proposed rule. The change simply changed the wording of one sentence and was not significant.

There were public comments and most were concerning the inclusion of sole proprietorships in the new rule. Many of the comments were requesting sole proprietorships be exempt, their registration voluntary or registration free or at a reduced fee because it was tantamount to being *double-taxed*. While the Board feels it is necessary to include sole proprietorships, they did approve a reduced fee for sole proprietorship registration and renewal at their March 17, 2006 Board meeting. Some comments questioned the need for firm registration to which the Board responded that it is necessary to ensure geoscience is practiced by qualified individuals and entities, which in turn protects the public health and safety.

The new rule is adopted under the Texas Occupations Code, Chapter 1002, §1002.351, which authorizes the Board to establish conditions and fees for the registration of firms.

§851.30. Firm Registration.

(a) The Texas Board of Professional Geoscientists shall receive, evaluate, and process all applications for a certificate of registration issued under the authority of the Texas Geoscience Practice Act (Act). Applications for the certificate of registration shall be accepted from all firms offering to engage or engaging in the practice of professional geoscience for the public in Texas. As provided in §851.10(11), the term firm includes corporations, sole-proprietorships, partnerships and/or joint stock associations. For the purposes of this section, the term public includes but is not limited to political subdivisions of the state, business entities, and individuals. The Board has the authority under the Act to issue an annual certificate of registration to applicants that, subsequent to review and evaluation, are found to have met all requirements of the Act and Board rules. The Board has the authority under the Act to deny a certificate of registration to any applicant found not to have met all requirements of the Act and Board rules. This section does not apply to an engineering firm that performs service or work that is both engineering and geoscience.

(b) The Board may issue a certificate of registration only to applicant firms that meet the requirements set forth in §1002.351(a)(1) and (2) of the Act and this section.

(c) The authorized official of the firm shall complete the form furnished by the Board which includes but is not limited to the following information listed in paragraphs (1) - (6) of this subsection:

(1) the name, address, and communication number of the firm offering to engage or engaging in the practice of professional geoscience for the public in Texas;

(2) the name, position, address, and communication numbers of each officer or director;

(3) the name, address and current active Texas professional geoscientist license number of each regular, full-time geoscience employee performing geoscientific work for the public in Texas on behalf of the firm;

(4) the name, location, and communication numbers of each subsidiary or branch office offering to engage or engaging in the practice of professional geoscience for the public in Texas, if any;

(5) a signed statement attesting to the correctness and completeness of the application; and

(6) an application fee as established by the Board.

(d) For a firm that offers or performs services only on a part-time basis, the professional geoscientist who has physical presence, is a full-time employee of the firm, and offers or performs the geoscientific work or who directly supervises the geoscientific work while the firm is in operation shall satisfy the requirement of the regular, full-time employee as set forth in §851.152 of this chapter.

(e) The application fee will not be refunded.

(f) The certificate of registration shall be valid for a period of one year from the date it is issued. A renewed or reissued license is valid for a period of one year from the expiration date of the license being renewed. At least 45 - 60 days in advance of the date of the expiration, the Board shall notify each firm holding a certificate of registration of the date of the expiration and the amount of the fee that shall be required for its renewal for one year. The renewal notice shall be mailed to the last address provided by the firm to the Board. The certificate of registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the Board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(g) A certificate of registration which has been expired for less than one year may be renewed by completing the renewal statement sent by the Board and payment of a $50 late renewal fee. When renewing an expired certificate of registration, the authorized official of the firm shall submit a written statement of whether geoscientific services were offered, pending, or performed for the public in Texas during the time the certificate of registration was expired.

(h) If a certificate of registration has been expired for more than one year, the firm must re-apply for certification under the laws and rules in effect at the time of the new application and shall be issued a new certificate of registration serial number if the new application is approved.

(i) The renewal fee will not be refunded.

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 March 31, 2006.

TRD-200601969
Frank Knapp
Assistant Attorney General
Texas Board of Professional Geoscientists
Effective date: September 1, 2006
Proposal publication date: January 20, 2006
For further information, please call: (512) 936-4402

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22 TAC §851.31

The Texas Board of Professional Geoscientists (TBPG) adopts new rule §851.31, concerning temporary licenses. The new rule is adopted without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 51) and will not be republished.

The adopted new rule outlines procedures for obtaining a temporary license to practice geoscience in the state. The new rule would allow for someone licensed in another state to apply for a temporary license to practice in Texas for up to 90 days, and would not be renewable after the 90 days. It also allows for someone applying for a reciprocal license to practice temporarily until the determination is made on whether or not the reciprocal license will be granted. Temporary licensees would be subject to all applicable board laws and rules.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Texas Occupations Code §1002.258, which authorizes the Board to establish conditions and fees for the issuance of a temporary license.

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 March 31, 2006.

TRD-200601970
Frank Knapp
Assistant Attorney General
Texas Board of Professional Geoscientists
Effective date: September 1, 2006
Proposal publication date: January 6, 2006
For further information, please call: (512) 936-4402

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22 TAC §851.80

The Texas Board of Professional Geoscientists (TBPG) adopts amendments to §851.80, concerning fees. The amendments are adopted without changes to the proposed text as published in the January 20, 2006, issue of the *Texas Register* (31 TexReg 372) and will not be republished.

The adopted amendments establish a $75 firm registration fee for firms or corporations wanting to practice geoscience before the public and a $150 annual renewal fee for said firms who want to maintain their registration. Chapter 1002, §1002.351 of the Texas Occupations Code grants this Board authority to adopt rules relating to the public practice of geoscience by a firm or corporation and §1002.152 grants the Board the authority to set reasonable and necessary fees to be charged to applicants and license holders, including fees for application and renewal.

No comments were received regarding adoption of the amendment.

The amendments are adopted under the Texas Occupations Code, Chapter 1002, §1002.351 and §1002.152 which authorizes the Board to adopt and enforce rules necessary for the registration of firms and corporations and allows the Board to set appropriate fees.

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 March 31, 2006.

TRD-200601960

Frank Knapp
Assistant Attorney General
Texas Board of Professional Geoscientists
Effective date: April 20, 2006
Proposal publication date: January 20, 2006
For further information, please call: (512) 936-4402

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

25 TAC §157.131

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §157.131, concerning the designated trauma facility and emergency medical services account without changes to the proposed text as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8786) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The amendments to this section are necessary to provide clarification to the rule and to comply with legislative changes in Health and Safety Code (HSC), Chapter 780, resulting from the passage of House Bill 2470, 79th Texas Legislature, Regular Session, 2005. Additionally, the amendment was endorsed by the stakeholder group (Governor's EMS and Trauma Advisory Council) and department staff. The department anticipates a strengthening of the EMS/Trauma System due to the addition of new trauma facilities into the trauma systems as a result of the potential for increased funding for uncompensated trauma care.

SECTION-BY-SECTION SUMMARY

Amendments to §157.131 provide clarification to the rules and are necessary to comply with legislative changes in HSC, Chapter 780, resulting from the passage of House Bill 2470, 79th Texas Legislature, Regular Session, 2005. The amendments specifically concern the requirements associated with "in active pursuit" of trauma designation. The amended language allows hospitals not designated to file with the department a letter of intent to trauma designate and comply within 180 days with the following: submit a trauma designation application; submit data to the State EMS/Trauma Registry; and participate in the appropriate Regional Advisory Council. Once the requirements are met, the undesignated hospital is considered "in active pursuit" of designation and is eligible to apply for funding from the uncompensated trauma care from the Designated Trauma Facility and Emergency Medical Services (DTF/EMS) Account. If trauma designation is not attained on or before the second anniversary date of the hospital's notification by the department that it met "in active pursuit" requirements, it must return any funds received for uncompensated trauma care.

Section 157.131 currently limits access to the DTF/EMS Account funding to designated hospitals and undesignated hospitals that met certain "in active pursuit" of designation requirements by December 31, 2003. This rule amendment complies with new statutory language that eliminates the December 31, 2005, deadline and allows additional undesignated hospitals the opportunity to apply for DTF/EMS Account funding after meeting "in active pursuit" of designation requirements.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule 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 amendment is authorized by the Texas Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the department with the authority to adopt rules to implement the Emergency Medical Services Act; 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, provision, and administration 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 March 30, 2006.

TRD-200601920
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: April 19, 2006
Proposal publication date: December 30, 2005
For further information, please call: (512) 458-7111

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER J. PROHIBITED TRADE PRACTICES

28 TAC §21.1004

The Commissioner of Insurance adopts new §21.1004 concerning the use of residential property insurance claims in rating programs, including premium surcharge and claims-free programs. The new section is adopted with changes to the proposed text published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7994).

The new section is necessary to implement the amendments enacted under SB 14, by the 79th Legislature, Regular Session, to Insurance Code Article 5.43 (relating to optional premium discounts for certain residential property insurance policies) and Insurance Code §551.107 (relating to premium surcharges for residential property insurance policies). The new section is also necessary to establish requirements and procedures for residential property insurance rating programs, including premium surcharge programs and claims free programs, and for transition plans when an insurer introduces a new method or changes an existing method of evaluating a policyholder's claim experience which results in an increase of 10% or more in premium to any policyholder. These requirements and procedures are necessary to protect homeowners in Texas from increases in residential property insurance rates and premiums that vary greatly between renewal periods due to a new method or change in existing method of considering, utilizing, reviewing, or otherwise evaluating a policyholder's claim experience.

The Department invited public input on the SB 14 amendments in June 2005, and then posted an informal draft of the new section relating to residential property insurance claims on the Department website on September 19, 2005. Following publication of the proposed new section in the Texas Register on December 2, 2005, the Department held a hearing on February 15, 2006. In response to written comments received from interested parties prior to the hearing and comments made at the hearing, the Department has changed some of the proposed language in the text of the rule as adopted. The changes, however, do not introduce new subject matter or affect persons in addition to those subject to the proposal as published. The Department received various comments objecting to the word "drastic" in subsection (a) of the proposal to explain the purpose of the new section. One commenter opined that the use of the word "drastic" in proposed subsection (a) in referring to rate increases is unnecessarily negative and that there is nothing to support the idea that "drastic" rate increases may occur. Though the Department disagrees that the word "drastic" implies negativity against insurers, the Department has revised subsection (a) in the adoption to better articulate the purpose and intent of the rule and to clarify that the purpose of the new section is, in part, to protect homeowners from increases in residential property insurance rates and premiums that vary greatly between renewal periods and to provide homeowners with just, fair, and reasonable residential property insurance rates. One commenter suggested adding the words "premiums" and "property" in proposed subsection (a) for consistency in terminology in the new section and the Insurance Code. The Department agrees and has changed the proposed text in the last sentence of subsection (a) to read "This section applies to the rates and premiums applicable to residential property insurance policies that are delivered, issued for delivery, or renewed on or after January 1, 2006." The Department has also added the words "and premiums" to proposed subsection (f)(2) for consistency in terminology. The Department has made non-substantive changes to the term and definition of "natural cause claim" in proposed paragraph (b)(5). According to one commenter, a major concern to insurers is that the Department may be passing an opportunity to define "natural causes" and this is a time when the Department could provide either a definition or basis for classification as "natural." The Department agrees and has revised for clarification, consistency, and accuracy the definition of "natural cause claim" in proposed paragraph (b)(5). The Department has changed the term to "natural cause" and revised the definition of that term to read "a weather related cause" instead of "a weather related claim." Another commenter suggested deleting the definition entirely because, according to the commenter, it limits the scope and intent of the Legislature. The Department does not agree because a definition of "natural cause" is necessary to avoid ambiguity in interpretation and implementation of the new section. In response to comments, the phrase "claims incurred" in proposed subsection (c) has been changed to "filed claims occurring on or after September 1, 2005," because the Department agrees that a claim must be filed before it can be used in rating programs.

The SB 14 amendments harmonize Article 5.43 and §551.107 by adding language to Article 5.43 which conforms to the language in §551.107. The amendments identify claims that cannot be used as residential property insurance claims in rating programs whether the claims are considered for a premium surcharge or claims-free program. These claims include: (1) claims resulting from a loss caused by natural causes; (2) a claim that is filed but not paid or payable under a residential property policy; and (3) a claim that an insurer is prohibited from using under Insurance Code Article 5.35-4 §3 (recodified as §544.353, HB 2018, 79th Legislature, Regular Session). Section 544.353 is the legislative enactment of revised Article 5.35-4 without substantive change. One commenter objected to proposed subsection (c), relating to prohibited premium consequences, stating that it is overly broad because a reference to 28 TAC §21.1007 (Restrictions on the Use of Underwriting Guidelines Based on a Water Damage Claim(s), Previous Mold Damage or a Mold Damage Claim(s)) is included in subsection (c)(3). Although §21.1007 was adopted to accomplish the purpose of Article 5.35-4, the Department agrees that the reference may be confusing and has revised subsection (c)(3) as adopted to omit the reference to §21.1007. The provisions of Article 5.35-4, which have been revised and enacted in §544.353 without substantive change, and the rules promulgated under Article 5.35-4 continue to be in effect. The Department received other comments regarding proposed subsection (c) from commenters who interpret SB 14 to mean that the prohibited claims specified in the Insurance Code Article 5.43 and §551.107 and in subsection (c) are not prohibited until January 1, 2006. The Department does not agree with this interpretation for the following reasons. Under SECTION 8 of SB 14, the amendments to Article 5.43 and §551.107 became effective September 1, 2005; therefore, under the new section the effective date for implementation of subsection (c) is also September 1, 2005, but only for rates applicable to insurance policies that are delivered, issued for delivery, or renewed on or after January 1, 2006. This is because SECTION 7 of SB 14 provides that the amendments to Article 5.43 and §551.107 apply only to rates applicable to insurance policies that are delivered, issued for delivery, or renewed on or after January 1, 2006.

Under proposed subsection (f), insurers are required to file a transition plan when a new method is introduced or a change is made to an existing method of considering, utilizing, reviewing, or otherwise evaluating a policyholder's claim experience. The Department received several comments regarding the proposed transition plan requirements. One commenter objected to proposed subsection (f) because the transition plan adds another layer of rate regulation, which is the opposite of the intention for file and use regulation, and many commenters expressed concern that subsection (f) could require a transition plan for any rating change no matter how minor. Another commenter recommended requiring a transition plan only when "substantial" changes were made to rating programs, while other commenters requested clarification of the transition plan requirements. The Department disagrees that the transition plan adds another layer of rate regulation because, as one commenter noted at the rule hearing, some insurers currently prepare transition plans for their rating programs. In addition, the transition plan is rate filing information that is within the ambit of the file and use system that is regulated under Article 5.13-2 of the Insurance Code, and it is a component in the regulatory framework that is needed to accomplish the purpose of the rule which is in accordance with Article 5.13-2 of the Insurance Code. The Department agrees that a transition plan should not be required for every change to methods used to evaluate policyholder's claim experience, and in response to requests for clarification, the Department has revised proposed subsection (f) by adding a threshold premium increase of 10% to trigger the transition plan requirement. Subsection (f) as adopted requires a transition plan only if a new method or change in existing method of evaluating a policyholder's claim experience results in a premium increase of 10% or more for any policyholder. As a result of the concerns expressed by commenters, the Department has determined that it is appropriate for the transition plan requirement to be of shorter duration than that proposed in subsection (g) and has revised proposed subsection (g) to provide that the transition plan requirement ends on January 1, 2008, instead of January 1, 2009, as proposed. The Department has also made non-substantive changes in proposed subsection (a), proposed subsection (b)(3), and proposed subsection (g). The purpose in subsection (a) has been revised to include reference to the establishment of requirements and procedures for insurers to file a transition plan which is addressed in subsection (f) and which was inadvertently omitted from the proposed subsection (a). Proposed subsection (b)(3) has been revised by adding "in whole or in part" to the definition of "claims-free program." This change is needed for clarification purposes. The subheading for proposed subsection (g) has been changed from "Termination clause" to "Expiration clause" for purposes of consistency and clarification.

New §21.1004(a) explains the purpose of the new section which is to protect Texas homeowners from increases in residential property insurance rates and premiums that vary greatly between renewals, to provide Texas homeowners with just, fair, and reasonable residential property insurance rates and premiums, and to place restrictions on the use of certain residential property insurance claims in accordance with Insurance Code Article 5.43 and §551.107. The section establishes procedures for insurers to file a transition plan when a new rating program is introduced or an existing rating program is changed. The section applies to the rates and premiums applicable to residential property insurance policies that are delivered, issued for delivery, or renewed on or after January 1, 2006. Subsection (b) defines terms used in the new section. Subsection (c) specifies the types of claims, in accordance with Insurance Code Article 5.43 §(a-1) and §551.107(b), for which an insurer may not assign any premium consequence through a premium surcharge or claims-free program based on filed claims occurring on or after September 1, 2005. Subsections (d) and (e) require that claims-free programs and premium surcharge rating programs utilized by residential property insurers be based on sound actuarial principles and subject to the actuarial support filing requirements of §5.9332 of this title in the event that such programs are introduced or changed. Subsection (f) requires residential property insurers to file a transition plan when an insurer introduces a new method or changes an existing method of considering, utilizing, reviewing, or otherwise evaluating a policyholder's claim experience which results in an increase of 10% or more in premium for any policyholder. Paragraphs (1) - (3) of subsection (f) set forth the transition plan requirements. Residential property insurance transition plans and rate filings are subject to the provisions of Article 5.13-2. Subsection (g) provides that the transition plan requirement expires on January 1, 2008.

General comments.

Comment: A commenter states that Article 5.35-4 of the Insurance Code was repealed September 1, 2005, and the commenter asserts that it no longer provides statutory authority for any proposed rule.

Agency Response: The Department agrees that Article 5.35-4 was repealed in HB 2018, 79th Legislature, Regular Session, effective September 1, 2005. However, simultaneous with the repeal was the enactment of Insurance Code §§544.351 - 544.354 also in HB 2018. Sections 544.351 - 544.354 constitute the revised Article 5.35-4 without substantive change that was enacted as part of the Texas Legislative Council's revised Insurance Code project. HB 941, 79th Legislature, Regular Session, amended Article 5.35-4 by adding subdivision (4), which was not repealed by HB 2018. Pursuant to Government Code §311.031(c), the repeal of a statute by a code does not affect an amendment or revision of the statute by the same legislature that enacted the code.

Subsection (a). Purpose and Applicability

Comment: Several commenters object to the use of the word "drastic" as it is used to describe rate increases in proposed subsection (a). One commenter states that use of this word carries an unnecessary note of negativity regarding insurers because there is nothing to support the idea that "drastic" rate increases might occur. Another commenter states that the proposal uses the word "drastic" in a way that appears to mean "unaffordable," which the commenter states is a vast departure from the meaning of the word "excessive" as used in an actuarial context. The commenter further states that "excessive" is a word used in rating laws in virtually every state and recommends "drastic" be changed to "excessive." Another commenter states that if "excessive" is vague in the context of this rule, then "drastic" is even more obscure. The commenter also expresses concern that the transition plan in proposed subsection (f) requires an insurer to evaluate each policyholder's premium change and to decide whether the change is "drastic."

Agency Response: The Department disagrees that the use of the word "drastic" to describe rate and premium increases implies negativity against insurers but rather contends that the term as used by the Department describes a potential outcome which could occur from an insurer's use of an individual's claim experience in rating programs. The SB 14 amendments may cause changes in an insurer's rating programs, and the Department's continuing goal is to protect consumers against excessive rates and premium changes. However, the Department has revised proposed subsection (a) in the adoption to better articulate the purpose and intent of the rule. The Department also disagrees that a transition plan would require the evaluation of each policyholder's premium change because actuaries can generally readily identify those groups of policyholders that would be most affected.

Comment: One commenter suggests that proposed subsection (a) be clarified to apply to "optional" claims-free and "optional" surcharge programs and that the terms "premiums" and "property" be added for consistency with the remainder of the new section and the Insurance Code.

Agency Response: The Department does not agree that adding the term "optional" in subsection (a) is necessary because the statutes are clear that such plans are optional. The Department does agree, however, that the addition in subsection (a) and subsection (f)(2) of the words "and premiums" to clarify that the new section applies to "rates and premiums," and the word "property" in subsection (a) to clarify "residential property insurance" is necessary for consistency and has revised subsections (a) and (f) accordingly

Subsection (b). Definitions

Comment: One commenter states that the definition in proposed paragraph (b)(1) of "residential property insurance" should be revised to exclude farm and ranch insurance and farm and ranch owners insurance because these lines are described as commercial property insurance in Article 5.13-2.

Agency Response: The Department disagrees. Farm and ranch insurance and farm and ranch owners insurance are lines that are included in the definition of "residential property insurance" in both Article 5.43 and §551.107, and those statutes are being implemented in this rule.

Comment: One commenter suggests that the term "claim experience" in proposed subsection (b)(3), which defines the term "claims-free program," should be defined and should pertain to the number of claims that are paid or payable under a residential property insurance policy. The commenter further states that the definition of "claims-free program" in proposed paragraph (b)(3) has been expanded beyond what is provided under Article 5.43. Another commenter states that the definition of "claims-free program" in proposed subsection (b)(3) is too broad unless the only reference to the term is in proposed subsection (d).

Agency Response: The Department disagrees that the term "claim experience" as used in the definition of "claims-free program" in proposed subsection (b)(3) is overly broad and needs to be defined. Article 5.43(d) specifically refers to the "claims experience" of a policyholder, and §551.107(c) refers to the existence of claims ("one or more claims in the preceding three policy years"). Article 5.43 and §551.107 do not say that a claims-free program or premium surcharge program must be based on a specific "number" of claims. For example, a claims-free program may depend on the absence of any claims or absence of claims over a certain dollar amount, or an insurer under a premium surcharge program may combine a certain number of claims as in three or more claims. The Department disagrees that the definition of "claims-free program" in proposed paragraph (b)(3) has been expanded beyond what is provided under Article 5.43 because the proposed definition of "claims-free program" is consistent with the statutory language of Article 5.43. The only reference to the term "claims-free program" is in subsection (d).

Comment: A commenter states that the definition of "natural cause claim" as "a weather claim" in proposed paragraph (b)(5) limits the scope and intent of the Legislature and notes that the amendments to Article 5.43 and §551.107 maintain the broader term "natural causes" rather than the narrower term "weather related claim." The commenter recommends deleting the definition. Another commenter states that a major concern to insurers is that the Department may be passing an opportunity to define "natural causes," and this is a time when the Department could provide either a definition or basis for classification as "natural."

Agency Response: The Department disagrees that defining a "natural cause" claim as a weather related claim limits the scope of that term because equating a "natural causes" claim with a weather related claim is a commonly accepted interpretation. Therefore, the Department further disagrees that the definition should be deleted in its entirety. However, as a result of the comment, the Department has made a non-substantive change to the term and definition of "natural cause claim" for clarification, consistency and accuracy. The Department has changed the term to "natural cause" defined as "a weather related cause." Also, to avoid any ambiguity in interpretation and implementation of the new section due to a lack of definition for the term "natural cause" the Department is retaining the definition.

Comment: One commenter contends that the definition of "claim that is filed but not paid or payable" in proposed subsection (b)(6) has been expanded in the rule beyond what is provided under Article 5.43. The commenter states that the language used by the Legislature for a "claim that is filed but not paid or payable under the policy" is unambiguous and requires neither elaboration nor expansion. The commenter specifically objects to the use of the term "customer inquiry" in proposed subsection (b)(6) and points out that the Legislature does not refer to "customer inquiry" as a claim in the Insurance Code.

Agency Response: The Department agrees that the statutory language of Article 5.43 and §551.107 is plain and unambiguous but disagrees that the definition of "claim filed but not paid or payable" should be deleted from the rule. The additional language regarding a "customer inquiry" in the definition of a "claim filed but not paid or payable" is necessary to make clear that a customer inquiry that does not result in an indemnity payment under the provisions of the policy is not a claim because some insurers may open a claim or establish a claim reserve when they receive a customer inquiry.

Comment: A commenter states that the definitions of "premium surcharge" in proposed subsection (b)(2) and "claims-free program" in proposed subsection (b)(3) are not clear when read in conjunction with proposed subsection (c) which prohibits a premium consequence for certain claims that may be used in determining a premium surcharge or claims-free program. According to the commenter, it is unclear whether a premium consequence is allowed when a customer is moved between affiliated companies. If this is not allowed, the purpose of defining the terms as they are currently defined in the proposal is not clear.

Agency Response: It is the Department's position that the definitions are clear and consistent with Article 5.43 and §551.107. Section 21.1004 reflects the statutory framework enacted to harmonize the two statutes, and it is the Department's position that the intent of the Legislature is consistency in the use of "claim experience" whether used in a premium surcharge program under §551.107 or a claims-free program under Article 5.43.

Comment: One commenter objects to the definition of "transition plan" in subsection (b)(4) and states that the words "fair," "just," and "reasonable" are used as surrogates for "perceived affordability." The commenter states that "fair" has a technical meaning within actuarial science, but as used within the rule, it does not appear to have the same meaning. The commenter also states that "moderating rate and premium increases" is not defined, and the commenter asserts that this suggests an after-the-fact subjective determination of affordability that would trigger the need for a "transition plan."

Agency Response: The Department disagrees with the characterization of the words "fair," "just," and "reasonable" as being surrogates for "affordability." The basic purpose of the transition plan is to phase in the effect of the introduction of, or change to, a premium surcharge or claims-free program, including a tier classification, so that a policyholder is not subject to rates and premiums that vary greatly between renewal periods. Insurers commonly phase in or temper large rate changes over time for any of a number of reasons and with the goal of avoiding extreme dislocation within their customer base. Furthermore, the Legislature has enacted rate regulatory statutes using the words "fair," "just," and "reasonable." For example, in the Insurance Code Article 1.02 these terms are used as statutory requisites for all rates used under the Insurance Code. These terms as used in the definition of "transition plan" in subsection (b)(4) are used consistently with the statutory requisites. The Department also disagrees that the lack of a definition for the phrase "moderating rate and premium increases" suggests an after-the-fact subjective determination of affordability that would trigger the need for a "transition plan." However, the Department addresses the concern of an after-the-fact subjective determination of affordability, and other concerns regarding the transition plan, by clarifying in subsection (f) that a transition plan is required only if there is an increase of 10% or more in premium for any policyholder.

Subsection (c). Premium consequence prohibited

Comment: One commenter points out that proposed subsection (c) references "claims incurred" and the commenter states that this is inconsistent with proposed subsection (c)(2) that pertains to claims filed but not paid or payable. According to the commenter, the implication of Article 5.43 and §551.107 is that until a claim has been filed a surcharge cannot be assessed and a claims-free discount cannot be terminated. Similarly, a premium consequence should be based on claims filed, not claims incurred. Otherwise the rule could exclude consumers from intended protection.

Agency Response: The Department agrees and has changed the term "incurred claims" to "filed claims occurring on or after September 1, 2005," in subsection (c) as adopted.

Comment: A commenter states that prohibiting a premium consequence "in whole or in part" in proposed subsection (c) is beyond statutory support and could impair the entire basis for rating. Another commenter states that the claims that are permitted to be used in the calculation of rates are dictated by statute, and merely reiterated in the rule. The commenter also states that statistics show that policyholders with claims are likely to have future claims and the use of these claims in rating is fair and actuarially justified. The commenter asserts that by excluding claims which are statistically predicative, rates may be artificially excessive for those lower risk customers and artificially inadequate for those who present a higher risk of loss.

Agency Response: The Department disagrees that prohibiting a premium consequence "in whole or in part" is beyond statutory support because subsection (c) is consistent with Article 5.43 which applies to insurers that use a tier classification or discount program that has a premium consequence based in whole or in part on claims experience. Furthermore, as the commenter noted, the claims that cannot be used in a surcharge, discount, tiering, or claims-free program are dictated by statute. While such claims may or may not be predictive of future claims (no data was submitted by the commenter), the public policy decision represented by the legislation overrides actuarial considerations. There is no prohibition in the rule for using all claims to calculate overall rate levels.

Comment: A commenter states that proposed subsection (c) is overly broad and inconsistent and that changes in law apply only to the rates applicable to insurance policies that are delivered, issued for delivery, or renewed after January 1, 2006. The commenter further states that rates applicable to policies that are delivered, issued for delivery, or renewed before January 1, 2006, are governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for this purpose. The commenter believes that insurers who renew policies between September 1, 2005, and January 1, 2006, would seemingly be prohibited from using claims identified in this proposal even though SB 14 clearly states that policies that renew prior to January 1, 2006, are governed by the law as it existed prior to the effective date of the act.

Agency Response: The Department disagrees with the commenter's interpretation of the rule. Under SECTION 8 of SB 14, the amendments to Article 5.43 and §551.107 became effective September 1, 2005. However, under SECTION 7 of SB 14 the amendments apply only to rates applicable to insurance policies that are delivered, issued for delivery, or renewed on or after January 1, 2006. The rule is consistent with SECTIONS 7 and 8 of SB 14. Subsection (a) clearly states that the new section applies only to policies that are delivered, issued for delivery, or renewed on or after January 1, 2006. Subsection (c) prohibits insurers from assigning a premium consequence on such policies for certain filed claims occurring on or after September 1, 2005.

Comment: One commenter recommends that the reference to §21.1007 in proposed subsection (c)(3) be removed or clarified. According to the commenter, SB 14 only referenced claims identified in Articles 5.35-4, 5.43, and §551.107. Section 21.1007(c) prohibits the use of an underwriting guideline based on a single prior water damage claim but permits the surcharge provision in former Art. 21.49-2B, Sec. 7, recodified at §551.107. The commenter also asserts that §21.1007(c) read together with amended §551.107(c) permits an insurer to surcharge upon renewal (for one or more water damage claims), and if an insurer can surcharge upon renewal (for one or more claims) then such a claim must count as a "claim" to determine whether an insured is claims free for the purposes of an optional claims-free discount. The commenter opines that the same problem exists for previous mold damage claims when §21.1007(e)(3) is read in conjunction with amended §551.107(c). According to the commenter, it appears that an insurer may surcharge on renewal for one or more remediated, inspected, and certified mold damage claims and should also be able to count the same claim to determine whether an insured is "claims free" for purposes of an optional claims free discount.

Agency Response: The Department agrees that the reference to §21.1007 relating to certain water damage and mold damage claims should be removed because it is confusing as indicated by the comment. The Department has revised subsection (c)(3) as adopted accordingly. Section 551.107(b) clearly defines a claim under §551.107 to not include a claim: (1) resulting from a loss caused by natural causes; or (2) that is filed but is not paid or payable under the policy; or (3) that an insurer is prohibited from using under Section 3, Article 5.35-4. These are not claims for the purpose of §551.107 which authorizes premium surcharges. Therefore, the Department does not agree with the interpretation in the comment.

Subsection (f). Transition plan required.

Comment: One commenter asserts that the transition plan required in proposed subsection (f) is overly broad and could require a transition plan for any rating change no matter how minor. Another commenter recommends changing the transition plan requirement to limit the need to prepare and file such plans when only minor changes in premium occur. Another commenter states that the wording of the transition plan suggests application to individual policyholders even when their claim behavior necessitates a rate increase. The commenter questions whether a transition plan would be required if an insurer needs a 50% statewide rate increase due to claims experience of all its policyholders.

Agency Response: The Department agrees that a transition plan should not be required for every change, no matter how minor, in a premium surcharge program; claims-free program, including a tiering classification; or other discount program, and has revised subsection (f) as adopted to add a threshold premium increase of 10% to trigger the transition plan requirement. A transition plan is required only if a new method or change in an existing method of evaluating a policyholder's claim experience results in an increase of 10% or more in premium for any policyholder. Subsection (f) requires that the transition plan shall moderate or mitigate overall rate and premium increases which result in the increase of 10% or more in premium for any policyholder.

Comment: One commenter states that the transition plan required in proposed subsection (f) adds another layer of rate regulation which is the opposite of the intention for file and use regulation. Another commenter objects to adoption of this rule because it does not enhance competition as the commenter believes the Legislature intended and may provide a pitfall for insurers who may not have recognized an "excessive" or "substantial" rate increase for an individual policyholder.

Agency Response: The Department disagrees. As one commenter noted at the hearing on this rule, some insurers currently prepare transition plans for their rating programs. The transition plan is rate filing information that is within the ambit of the file and use system that is regulated under Article 5.13-2 of the Insurance Code, and it is a component in the regulatory framework that is needed to accomplish the purpose of the rule which is in accordance with Article 5.13-2 of the Insurance Code. Additionally, the amendments to Article 5.43 and §551.107 enacted by the 79th Legislature in SB 14 also reflect the intent of the Legislature. These amendments are not discretionary. The Department disagrees that the rule provides a pitfall for insurers who may not have recognized an "excessive" or "substantial" increase because the rule as adopted requires a transition plan when the rating changes result in a premium increase of 10% or more for any policyholder.

Comment: Another commenter states that §21.1004(f)(2) requires the transition plan to consider any changes other than claims history that may impact overall rates, and this requirement seems beyond the purpose of the rule which deals with changes to rates and premiums due to the introduction of, or changes to, a claims-free or premium surcharge program. This commenter also states that a transition plan is required to "be reasonable and promote market and rate stability" but the word "market" is amorphous and could refer to the entire market for all insurers or an individual insurer's book of business.

Agency Response: The purpose of the rule, as explained in subsection (a) as adopted, is to protect homeowners from increases in residential property insurance rates and premiums that vary greatly between renewal periods and to provide homeowners with just, fair, and reasonable homeowners insurance rates. The transition plan requirement in subsection (f) is a component in the regulatory framework to accomplish this purpose. The requirement in subsection (f) that the transition plan "be reasonable and promote market and rate stability" when read in the context of subsection (f) in its totality refers to the individual insurer's book of business.

Comment: One commenter recommends that "rate stability" as used in subsection (f) be defined.

Agency Response: The Department does not agree that a definition of "rate stability" is necessary. The Department interprets "rate stability" to be a relative term which depends on context for meaning and therefore, cannot be limited to a single definition. This is supported by the fact that the Legislature has in the past used the term "rate stability" without defining it (for example, in Insurance Code Article 5.101). Furthermore, it is the Department's position that limiting "rate stability" to a single definition would not provide insurers with flexibility that is consistent with the file and use system.

Comment: One commenter suggested that proposed subsection (f)(3) should include the term "affected policyholders" in lieu of the term "individual policyholders."

Agency Response: The Department does not agree that this change is necessary because the term "individual policyholders" must also refer to "affected policyholders" due to the language in adopted subsection (f) as a whole.

Subsection (g). Expiration clause.

Comment: One commenter states that they are assuming that under proposed subsection (g) that proposed subsection (f) expires in 2009, not that a transition plan must spread out changes to 2009.

Agency Response: The commenter assumes correctly. However, as a result of the concerns expressed by commenters regarding the transition plan requirements in subsection (f), the Department has changed subsection (g) as adopted to provide that the transition plan requirement in subsection (f) will end on January 1, 2008 instead of on January 1, 2009 as proposed.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For: Texas Watch.

For with changes: Office of Public Insurance Counsel, Nationwide Insurance and Financial Services, State Farm Insurance Company, Farmers Insurance Group, and American Insurance Association.

Against: Insurance Council of Texas.

The new section is adopted under Insurance Code Articles 5.13-2 and 5.43 and §§544.353 (formerly Article 5.35-4 §3), 551.107 and 36.001. Article 5.13-2, §5(a) and (a-1) provide that insurers shall file with the Commissioner all rates, applicable rating manuals, supplementary rating information, and additional information as required by the Commissioner for risks written in this state. SB 14, enacted by the 79th Legislature, Regular Session, amended various provisions of Chapter 5 of the Insurance Code, including Articles 5.144, 5.171, 5.43, and §551.107. The SB 14 amendments, in part, harmonize Article 5.43 and §551.107 by amending Article 5.43 to include the identical language in §551.107 to identify claims that cannot be used as residential property insurance claims in rating programs whether the claims are considered for a premium surcharge, discount, or claims-free program. Article 5.43 provides that the Commissioner shall adopt rules as necessary to implement the article and shall establish by rule guidelines for insurers to develop discounts based on sound actuarial principles. One of the SB 14 amendments added a provision to §551.107 that the Commissioner shall adopt rules as necessary to implement the section. Section 544.353 (formerly Article 5.35-4 §3) requires underwriting guidelines relating to a water damage claim or claims used by an insurer to be governed by rules adopted by the Commissioner and provides that an insurer may not use such an underwriting guideline that is not in accordance with rules adopted by the Commissioner in accordance with the purpose of the Insurance Code Title 5 Chapter 544 Subchapter H (formerly Article 5.35-4). 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.

§21.1004. Restrictions on Certain Claims in Residential Property Insurance and Transition Plan Requirement.

(a) Purpose and Applicability. The purpose of this section is to protect homeowners in Texas from increases in residential property insurance rates and premiums that vary greatly between renewal periods and to provide homeowners in Texas with just, fair, and reasonable residential property insurance rates and premiums. This section places restrictions on the use of residential property insurance claims in rates and premiums due to the introduction of, or changes to, a claims-free program or premium surcharge program in accordance with the Insurance Code and also establishes the requirements and procedures for insurers to file a transition plan. This section applies to the rates and premiums applicable to residential property insurance policies that are delivered, issued for delivery, or renewed on or after January 1, 2006.

(b) Definitions for the purposes of this section.

(1) Residential property insurance--Property or property and casualty insurance covering a dwelling, including homeowner's insurance, residential fire and allied lines insurance, farm and ranch insurance, or farm and ranch owners insurance.

(2) Premium surcharge--An additional amount due to a policyholder's claims experience that is added to the base rate. The term does not include a reduction or elimination of a discount previously received by an insured, reassignment of an insured from one rating tier to another, re-rating an insured, or re-underwriting an insured by using multiple affiliates.

(3) Claims-free program--Any program that considers a policyholder's claim experience, in whole or in part, whether through the use of discounts, a tier classification, or other program that does not qualify as a premium surcharge if the policyholder has been a residential property insurance policyholder with that insurer or an affiliate of that insurer.

(4) Transition plan--A plan that promotes rates and premiums that are fair, just, and reasonable by moderating rate and premium increases caused by the introduction of, or change to, a claims-free or premium surcharge program, including a tier classification system.

(5) Natural cause--A weather related cause.

(6) Claim that is filed but is not paid or payable--A claim that is filed, including a customer inquiry, that does not result in an indemnity payment under the provisions of the policy.

(c) Premium consequence prohibited. An insurer may not assign any premium consequence through a premium surcharge or claims-free program based on filed claims occurring on or after September 1, 2005, in whole or in part, due to:

(1) claims resulting from a loss caused by natural causes;

(2) a claim that is filed but not paid or payable under a residential property policy; or

(3) a claim that an insurer is prohibited from using under Insurance Code Article 5.35-4 §3 (recodified as §544.353, HB 2018 79th Legislature, Regular Session).

(d) Claims-free programs. Claims-free programs must be based on sound actuarial principles. Actuarial support as specified in §5.9332 of this title (relating to Filing Requirements) must be filed with the department in the event such program is introduced or changed.

(e) Premium surcharge programs. Premium surcharge programs must be based on sound actuarial principles. Actuarial support as specified in §5.9332 of this title must be filed with the department in the event such program is introduced or changed.

(f) Transition plan required. If an insurer introduces a new method or changes an existing method of considering, utilizing, reviewing, or otherwise evaluating a policyholder's claim experience, including a tier classification, which results in an increase of 10% or more in premium for any policyholder, a transition plan is required and must be filed with the department. The transition plan shall:

(1) be reasonable and promote market and rate stability;

(2) take into consideration any changes other than claims history that may impact overall rates and premiums; and

(3) moderate or otherwise mitigate overall rate and premium increases for individual policyholders over one or several renewal periods.

(g) Expiration clause. Subsection (f) of this section expires January 1, 2008.

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 April 3, 2006.

TRD-200601973
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: April 23, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 13. LAND RESOURCES

SUBCHAPTER C. GROUNDWATER LEASING

31 TAC §13.30, §13.31

The General Land Office (GLO) adopts amendments to 31 TAC, Chapter 13, relating to Groundwater Leasing, §13.30 relating to Statement of Policy, §13.31 relating to Leasing Procedures. The amendments are adopted with changes to the proposed text as published in the January 27, 2006, issue of the *Texas Register*

(31 TexReg 456). The new subchapter C will contain rules governing the procedures for the leasing of groundwater resources on state lands.

The amendments are intended provide guidance for interested parties as it relates to the GLO's policy and procedures regarding the exploration and development of groundwater resources on state lands.

Governing actions of the GLO and the commissioner in the exploration and leasing process as it relates to state groundwater resources, adopted §13.30, relating to Statement of Policy, describes the policies of the GLO regarding the development of State groundwater resources; requires the submission of any proposed leases involving groundwater resources on permanent school fund lands to the School Land Board for review; and requires notification of any regional water planning group and/or groundwater conservation district in which lands proposed for such leases are located. Section 13.31, relating to Leasing Procedures, sets out the procedures for leasing groundwater resources either by sealed bid or direct negotiation.

Written comments on the proposal were received from the Brewster County Groundwater Conservation District, Bluebonnet Groundwater Conservation District, Jeff Davis and Presidio Counties UWCD, and a joint comment on behalf of Environmental Defense, National Wildlife Federation, and the Lone Star Chapter of the Sierra Club.

The comments generally addressed the following concerns: (1) modifying the phrase "rules of any groundwater conservation district" with the word "administrative" might serve as a limitation of the district's authority; (2) that the rule language did not expressly address lands located outside the jurisdiction of a groundwater conservation district; (3) the term "quasi-municipal" was undefined; (4) that additional or alternate criteria should be considered before entering into any such leases; and (5) objections, generally, to the use of a sealed bid process.

In response to the first concern, the commissioner changed the word "administrative" in the proposed amendments at §13.30(c) to "applicable." This alteration in the text of the rule should make it more clear that any applicable rules of a groundwater conservation district with jurisdiction will be considered.

To address the second concern, a sentence stating that "For land not located in a groundwater conservation district, the commissioner may require development consistent with the rules of any groundwater conservation district with jurisdiction over an aquifer that is likely to be affected by the project" was added to the text of §13.30(c).

The phrase "quasi-municipal" was replaced by "other" in §13.31(a) to address the third concern. This change was made so as to better effectuate the intent that potential lessees who are suppliers of public or domestic water systems will be given priority in the leasing process.

With regard to the fourth concern, specific proposals submitted by commentors were considered. The commissioner notes that, as published, the proposed rule sets out broad categories of criterion that may be used in the review of any proposed leases. The commissioner notes that the rule, as adopted, is consistent with existing policies of the General Land Office and does not limit the criteria by which a proposed lease may be evaluated.

The fifth category of concern mentioned by commentors relates to the potential use of a sealed bid process for the awarding of leases. The commissioner notes that this process is consistent with other procedures used in the leasing of State lands.

The justification for the adopted rulemaking is that the public will benefit because the new sections will set out both the policy and procedures for the exploration and development of groundwater resources on State Lands. There will be no effect on small businesses, and a local employment impact statement on these proposed regulations is not required, because the adopted rule will not have any identifiable material adverse affect on any local economy in the first five years it will be in effect.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the adopted rulemaking as a "major environmental rule." Under the Government Code, a "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state. The adopted rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program.

The commissioner of the GLO has evaluated the adopted amendment to determine whether Texas Government Code, Chapter 2007, is applicable, and whether a detailed takings impact assessment is required. The commissioner has determined the adopted rules do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the commissioner has determined that the adopted rules will not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the new rule being adopted.

These amendments are adopted under Texas Natural Resources Code, Chapter 31, including §31.051, which authorizes the commissioner to make and enforce suitable rules consistent with the law and Texas Natural Resources Code, Chapter 51, including §51.121 which authorizes the commissioner to lease unsold public school land for any purpose the commissioner determines is in the best interest of the state under terms and conditions set by the commissioner.

Texas Natural Resources Code §§51.121 and 32.061 are affected by this rulemaking.

§13.30. Statement of Policy.

(a) This subchapter applies to applications to lease public lands dedicated to the permanent school fund for the purpose of exploring for or developing groundwater resources located on or under such lands.

(b) The provisions of this subchapter are intended to assure that the groundwater resources of permanent school fund lands are developed and produced in a manner that maximizes their potential while recognizing and taking into account the public interest, sound water use and conservation practices, and impacts on existing uses.

(c) Projects undertaken by a lessee to develop groundwater resources on permanent school fund lands will be subject to applicable local, state, and federal law as well as any applicable rules of groundwater conservation district(s) in which the lands may be located. For land not located in a groundwater conservation district, the commissioner may require development consistent with the rules of any groundwater conservation district with jurisdiction over an aquifer that is likely to be affected by the project. Such projects may not export groundwater produced from state-owned land to a foreign country.

(d) Lessees will be authorized to develop groundwater resources on permanent school fund lands only when sufficient scientific data and technical information is available for an informed determination that the groundwater resource can be produced in a manner that will support an economically viable market with a sustained yield that does not significantly affect current uses of adjoining users of water from the same source in an adverse manner.

(e) The commissioner shall submit proposed leases of permanent school fund lands that include authorization for the commercial development of groundwater resources to the School Land Board for review and comment prior to final approval and execution of any such leases. Additionally, any regional water planning group and/or groundwater conservation district in which lands proposed for such leases are located shall be notified prior to final approval and execution of any such leases.

§13.31. Leasing Procedures.

(a) Permanent school fund lands may be leased for the exploration or development of groundwater resources through either a sealed bid procedure or through direct negotiation, at the discretion of the commissioner. Municipalities and other providers of public water supplies may be given a priority preference to lease permanent school fund lands for development of a municipal or domestic water supply.

(b) A party interested in leasing permanent school fund lands for the exploration or development of groundwater resources may submit a lease application. Alternatively, the commissioner or GLO staff may nominate a tract or tracts for inclusion in a sealed bid lease sale. A tract proposed for lease or nominated shall be described in sufficient detail that it can be identified and evaluated by interested parties. The commissioner will determine the lease procedure to be followed after considering interest in a tract and the best interest of the State.

(1) Contents of Application. A party interested in leasing permanent school fund lands for the exploration or development of groundwater resources shall submit an application to the GLO on forms approved by the commissioner. An acceptable application shall include the following information:

(A) Name, address, and phone number of the person or entity submitting the application. For applicants other than natural persons, an organizational charter or certificate and related documentation of its current authority to conduct business in Texas and the name and official capacity of an authorized representative or agent shall also be provided.

(B) A description of the permanent school fund lands sought to be leased.

(C) A description of the purpose of the lease and the activities to be undertaken or conducted on the leased premises.

(D) A map on a scale adequate to show the location of the proposed lease. State tract numbers and names of rivers, streams, and lakes shall be shown where applicable. Location of project features should be depicted to the extent such information is available.

(E) A business plan that describes the various phases of a groundwater development project, including exploration and analysis, regulatory compliance, project budget and financing alternatives, marketing, development and production, right of way acquisition, and transportation and delivery. The plan should also detail the expertise available to evaluate scientific data and information and to assure that the permitted uses can be conducted in a manner consistent with sound engineering and management principles.

(F) Such other financial and background information about the proposed lessee, related entities, principals, or guarantors as may be requested by the commissioner to evaluate the application, the creditworthiness and experience of the applicant, or the potential viability of the proposed project.

(2) Nomination procedures. The commissioner or GLO staff may nominate a tract for lease. In the event the commissioner determines that a bid sale is in the best interest of the State, the commissioner will set the terms and conditions upon which such nominated tracts will be offered for lease. These terms will be advertised and bids taken. The commissioner may accept the best bid meeting the minimum requirement set by the commissioner or by law, or the commissioner may reject any or all bids.

(c) Leases under this chapter may include provisions for bonuses upon execution, delay rentals, shut-in royalties, production royalties, advance royalties, in-kind royalties, or include the State or the permanent school fund as a participating interest in the development or exploration.

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 April 3, 2006.

TRD-200601976
Trace Finley
Policy Director
General Land Office
Effective date: April 23, 2006
Proposal publication date: January 27, 2006
For further information, please call: (512) 305-8598

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PART 4. SCHOOL LAND BOARD

CHAPTER 151. OPERATIONS OF THE SCHOOL LAND BOARD

31 TAC §151.5

The School Land Board (SLB) adopts an amendment to 31 TAC, Chapter 151, §151.5, relating to the Exploration and Development of Groundwater Resources on State Lands. The amendment is adopted with changes to the proposed text as published in the January 27, 2006, issue of the *Texas Register* (31 TexReg 458).

The amendment provides guidance related to the criteria to be considered when reviewing proposed leases for the exploration and development of groundwater that are referred to the SLB by the Commissioner of the General Land Office.

Written comments on the proposal were received from the Brewster County Groundwater Conservation District, Bluebonnet Groundwater Conservation District, Jeff Davis and Presidio Counties UWCD, and a joint comment on behalf of Environmental Defense, National Wildlife Federation, and the Lone Star Chapter of the Sierra Club.

The comments generally addressed the following concerns: (1) modifying the phrase "rules of any groundwater conservation district" with the word "administrative" might serve as a limitation of the district's authority; (2) that the rule language did not expressly encompass both "exploration" and "development"; (3) that additional or alternate criteria should be considered by the board in its review of any proposed leases; and (4) that submission of proposed leases should be for the board's approval not for "review and comment."

In response to the first concern, the board changed the word "administrative" in the proposed amendment at §151.5(2) to "applicable." This alteration in the text of the rule should make it more clear that any applicable rules of a groundwater conservation district with jurisdiction will be considered. Changes to the first sentence of §151.5 that add "exploration and/or" before the word "development" are intended to address the second concern.

Specific proposals submitted by commentors regarding the third and fourth concerns were considered. With regard to the third concern, the board notes that, as published, the proposed rule sets out broad categories of criterion that the board may use in its review of any proposed leases. Particularly, the board notes that the rule, as adopted, is consistent with existing policies of the board and does not limit the criteria by which the board may evaluate a proposed lease. With regard to the fourth concern, the board notes that Texas law vests the authority to lease Permanent School Fund lands with the commissioner of the General Land Office.

The justification for the adopted rulemaking is that the public will benefit from the amendments because the new section will assure a thorough review of proposed projects and an assessment of the benefits and impacts to result from them. There will be no effect on small businesses, and a local employment impact statement on these proposed regulations is not required, because the proposed rule will not have any identifiable material adverse affect on any local economy in the first five years it will be in effect.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the adopted rulemaking as a "major environmental rule." Under the Government Code, a "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state. The adopted rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program.

The SLB has evaluated the adopted amendment to determine whether Texas Government Code, Chapter 2007, is applicable, and whether a detailed takings impact assessment is required. The board has determined the adopted rule does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the board has determined that the adopted rule would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the new rule being proposed.

The amendment is adopted under Texas Natural Resources Code, Chapter 32, including §32.062, which authorizes the board to adopt rules related to procedure and to the sale, lease, and development of PSF lands.

Texas Natural Resources Code §§51.121 and 32.061 are affected by this rulemaking.

§151.5. Exploration and Development of Groundwater Resources on State Lands.

Upon request by the commissioner of the General Land Office (GLO), the School Land Board (SLB) will review proposed leases of permanent school fund lands that include authorization for the exploration and/or commercial development of underground water resources. Such review shall consider issues related to the project's consistency with the goals and policies of the SLB, including but not limited to:

(1) how the proposed project will take into account the public good, water conservation efforts, and economic growth;

(2) whether the project will adhere to applicable local, state, and federal laws as well as any applicable rules of groundwater conservation district(s) in which the lands may be located;

(3) whether the rate of return on the project to the permanent school fund is consistent with the goals and strategies of the SLB; and

(4) whether any water produced from the lands can be treated and transported in an economical manner.

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 April 3, 2006.

TRD-200601975
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School Land Board
Effective date: April 23, 2006
Proposal publication date: January 27, 2006
For further information, please call: (512) 305-8598

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

The Texas Health and Human Services Commission adopts amendments to Title 40, Part 2, of the rules of the Department of Assistive and Rehabilitative Services (DARS), by repealing two separate sections in Chapter 101 for the Division for Blind Services and the Division for Rehabilitation Services concerning protest procedures, and replacing with a single rule pertaining to protest procedures applicable to the entire agency. The rules being repealed are §101.3839, concerning Protest Procedures and §101.4951, concerning Availability of Protest Procedures. The repeals are adopted without changes to the proposed text as published in the February 10, 2006, issue of the *Texas Register* (31 TexReg 829) and will not be republished. The rule replacing these two rules is 40 TAC §104.301, in a new Chapter 104 of Title 40, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services, and within Chapter 104 in a new Subchapter J, Protest Procedures. The repeals and replacement are adopted to consolidate separate rules concerning protest procedures from two of the legacy agencies of DARS, the Texas Commission for the Blind, and Texas Rehabilitation Commission, into one rule concerning protest procedures applicable to the entire Department of Assistive and Rehabilitative Services.

No comments were received regarding adoption of the repeal.

SUBCHAPTER F. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO BLIND SERVICES

DIVISION 5. PURCHASE OF GOODS AND SERVICES BY THE COMMISSION

40 TAC §101.3839

The repeal is adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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 March 30, 2006.

TRD-200601917
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: May 1, 2006
Proposal publication date: February 10, 2006
For further information, please call: (512) 424-4050

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SUBCHAPTER H. PURCHASE OF GOODS AND SERVICES FOR REHABILITATION SERVICES

DIVISION 10. PROTEST PROCEDURES

40 TAC §101.4951

The repeal is adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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 March 30, 2006.

TRD-200601918
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Effective date: May 1, 2006
Proposal publication date: February 10, 2006
For further information, please call: (512) 424-4050

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CHAPTER 104. PURCHASE OF GOODS AND SERVICES BY THE DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

SUBCHAPTER J. PROTEST PROCEDURES

40 TAC §104.301

The Texas Health and Human Services Commission adopts amendments to Title 40, Part 2, of the rules of the Department of Assistive and Rehabilitative Services (DARS). DARS adopts new Chapter 104, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services, and new Subchapter J, Protest Procedures, §104.301, Availability of Protest Procedures, without changes to the proposed text as published in the February 10, 2006 issue of the *Texas Register* (31 TexReg 830) and will not be republished. DARS is also repealing two separate sections in Chapter 101 for the Division for Blind Services and the Division for Rehabilitation Services concerning protest procedures, and replacing with this single rule pertaining to protest procedures applicable to the entire agency. The rules being repealed are §101.3839, concerning Protest Procedures and §101.4951, concerning Availability of Protest Procedures. The new rule replaces these two rules. The repeals and replacement are being adopted to consolidate separate rules concerning protest procedures from two of the legacy agencies of DARS, the Texas Commission for the Blind, and Texas Rehabilitation Commission, into one rule concerning protest procedures applicable to the entire Department of Assistive and Rehabilitative Services.

No comments were received regarding adoption of the new section.

The new section is adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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 March 30, 2006.

TRD-200601919
Sylvia F. Hardman
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Effective date: May 1, 2006
Proposal publication date: February 10, 2006
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CHAPTER 107. REHABILITATION SERVICES

SUBCHAPTER B. VOCATIONAL REHABILITATION SERVICES PROGRAM DIVISION 5. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION

40 TAC §107.219

The Texas Health and Human Services Commission adopts the amendment to Title 40, Part 2, Chapter 107, §107.219 of the rules of the Department of Assistive and Rehabilitative Services, concerning order of selection. The amendment is adopted without changes to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 1012), and will not be republished.

The amendment is being adopted to update the rules concerning order of selection, and conform to the provisions of the current DARS Division for Rehabilitation Services VR State Plan.

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

The amendment is being adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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 March 30, 2006.

TRD-200601921
Sylvia F. Hardman
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Effective date: April 19, 2006
Proposal publication date: February 17, 2006
For further information, please call: (512) 424-4050

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 5. FINANCE SUBCHAPTER E. PASS-THROUGH FARES AND TOLLS

43 TAC §§5.51 - 5.59

The Texas Department of Transportation (department) adopts amendments to §§5.51 - 5.59, concerning pass-through fares and tolls. The amendments to §§5.51 - 5.57 and 5.59 are adopted without changes to the proposed text as published in the February 10, 2006, issue of the *Texas Register* (31 TexReg 831) and will not be republished. Section 5.58 is adopted with changes and will be republished.

EXPLANATION OF ADOPTED AMENDMENTS

House Bill 2702, 79th Legislature, Regular Session, 2005, amended Transportation Code, §222.104, which governs agreements providing for pass-through tolls. Transportation Code, §222.104, requires changes to the rules to address the new statutory provisions allowing pass-through toll payments made by a public or private entity to the department and addresses additional subjects that can be included in an agreement providing for pass-through tolls. House Bill 2702 also added Transportation Code, §91.075, to allow the payment of pass-through fares on railway projects.

In addition, the department has now entered into several pass-through agreements under its current rules. Practical experience with these agreements has suggested ways in which the rules may be improved, so amendments are desirable to reflect that experience.

Section 5.51 is amended to include the new statutory language adding design, development, and financing as subjects suitable for a pass-through agreement. Section 5.51 is also amended to reference new Transportation Code, §222.104(c), which allows the department to receive a pass-through toll payment from a public or private entity. In addition, §5.51 is amended to reference new Transportation Code, §91.075(b), which allows pass-through fares on railway projects.

Section 5.52, concerning Definitions, is revised to add new definitions, delete definitions that are no longer necessary, and amend existing language. Paragraph (3) is amended to generalize the definition of department estimate so it will apply equally whether the department is paying or receiving pass-through tolls or fares.

For the same reason, paragraph (4) is amended to delete the definition of developer. Throughout the amended rules, the term developer is replaced by the term public or private entity.

New paragraph (6) is added to clarify that references to a highway include facilities necessary or convenient to the highway's construction.

New paragraph (8) is added to define the term pass-through agreement. The use of this term allows general references that will address both pass-through tolls and pass-through fares.

New paragraph (9) is added to define the term pass-through fare. The definition establishes that the term includes both passenger and freight rail and encompasses fares, surcharges, and user fees. Otherwise, the definition tracks the statutory language.

New paragraph (10) is amended so the definition of pass-through toll will more closely track the statutory language.

New paragraph (11) is added to define the phrase public or private entity, which is used throughout the rules to identify the entity with which the department may enter a pass-through agreement. This phrase replaces the term developer, which is used in the current rules, and is no longer appropriate because the law now allows the department to be the entity that develops a project.

New paragraph (12) is added to define railway so that it includes both passenger and freight rail and any facility in connection with a railway. This definition is essential to achieving the purpose of House Bill 2702 in allowing pass-through fares on any railway project.

Section 5.53(a), paragraph (1) is amended to require submission of a project location map with the public or private entity's proposal. Experience has shown that a project location map is extremely useful to the department in evaluating proposals.

Section 5.53(a), paragraph (5) is amended to clarify that experience in developing highway projects is only relevant if the pass-through agreement is for a highway project. Section 5.53(a), new paragraph (6) is added to impose a corresponding requirement for a statement of experience with regard to a pass-through agreement for a railway project. Subsequent paragraphs are renumbered.

Section 5.53(a), renumbered paragraph (7) is amended to clarify that information on development experience is unnecessary if the proposer will not be the one developing the project.

New paragraph (8) is added to address the corresponding situation in which the project will be developed by the department and the proposer will be making payments; the proposer must then provide information sufficient to show the proposer's ability to make the promised payments.

Section 5.53(a), paragraph (10) is amended to clarify that information on tolling is only necessary and relevant if the project will be for a highway.

Section 5.53(a), paragraph (11) is amended to clarify that information about the proposer's intention to enter a comprehensive development agreement is only necessary and relevant if the project will be for a highway.

Section 5.53(c) is amended to distinguish between highway and railway projects. For highway projects, the relevant citation for comprehensive development agreements is 43 TAC Chapter 27, while the corresponding citation for comprehensive development agreements for railway projects is 43 TAC Chapter 7.

Section 5.54 is amended to improve the grammatical construction. In addition, the amendments clarify that the initial approval by the Texas Transportation Commission (commission) permits the executive director to negotiate financial terms of a pass-through agreement, but that the detailed agreement itself will be negotiated after final commission approval of the financial terms. The amendments to paragraphs (3), (7), (8), and (9), clarify when certain requirements are only relevant to highway projects and impose corresponding requirements for railway projects. Paragraph (10) is amended to require additional information about the proposer's financial capability when the department will be constructing a project in reliance on future pass-through payments from the proposer.

Section 5.55(c) is amended to recognize that some of the listed factors will not be relevant to all pass-through agreements and to add the financial capability of the proposer as one of the criteria to be considered in evaluating proposals.

Section 5.55(g) is amended to recognize that the department cannot know in advance whether negotiations will be successful.

Section 5.56(a) is amended to reflect that at the time of commission approval, the department and the proposer will have negotiated the financial terms of the agreement, but may not have reached agreement on every word of a contract. Final commission authorization will be based on various criteria, including the new criterion that the project will serve the public interest and not merely a private interest. This criterion is added to ensure that the public interest is always paramount, particularly when a private entity is the proposer.

Section 5.56, new subsection (b), is added to list the required terms of any pass-through agreement. These terms combine in one place various terms that were previously implicit in several rules or were located in former §5.58(e). Experience with the pass-through mechanism has indicated that it is possible and desirable to combine the financial terms and project development terms in a single legal document. The list of matters that must be addressed in a pass-through agreement also includes items that have been shown through experience to be useful, such as a map of the project, a project schedule, and an estimated project budget.

Section 5.57, new subsection (a), is added to provide a method for calculating pass-through fares for railway projects. In concept, the methodology is similar to and runs parallel to the methodology used to establish pass-through tolls and considered in more detail in connection with new subsection (b). Subsection (a)(2)(B) allows pass-through fares to be calculated on any reasonable basis, including number, type, and class of passengers; type of freight; tonnage of freight; number or type of cars; mileage traveled; or characteristics of track. This flexibility is essential to allow pass-through fares to be tailored to the particular circumstances of a given railway.

New subsection (b)(1) of §5.57 is amended to clarify the standards to be considered by the commission in establishing the level of pass-through tolls. This includes rewording to improve the structure and clarity of the standards. One standard is added to ensure that the commission considers any benefit from the more rapid construction of a project. Amendments to this paragraph also clarify that the commission will not approve a level of pass-through tolls that exceed the department's cost estimate except by an amount equal to the savings realized through earlier construction of the project. Finally, the amended paragraph establishes that the commission will not compensate a public or private entity for its financing costs. As a whole, the amendments to new subsection (b)(1) establish necessary parameters that are designed to encourage the proper use of pass-through tolls while curbing demands that could result in excessive expenditures from the state highway fund.

Section 5.57(b)(2) is amended to improve the clarity of its original meaning by improving the grammatical structure. Paragraph (2), subparagraph (B) is rewritten to generalize the types of pass-through toll that will be allowed and to add whether the highway is tolled as a possible basis for varying pass-through toll payments. Paragraph (3) is rewritten to clarify the existing procedure with regard to overruns and underruns and to add a corresponding provision governing overruns and underruns when a project will be developed by the department. The provision governing overruns and underruns when a project will be developed by the department places the risk of overruns and underruns on the public or private entity unless the commission directs otherwise. Paragraph (3), subparagraph (B) rewrites the provision governing traffic volume to clarify the existing procedure.

Section 5.58(a) is amended to permit department, rather than commission, approval of environmental review. This allows projects to proceed expeditiously after receiving the commission's final approval of financial terms. New subsection (b) is added to establish procedures for right of way acquisition and the adjustment of utilities. In general, a public or private entity is required to follow the same procedures as would apply to the department. For right of way acquisition, alternative procedures may be approved if it would be sufficient to meet legal requirements.

Section 5.58, new subsection (c), is amended to make explicit that the standards in the former rule are intended for application to highway projects under the former rule and to establish design criteria for railway projects. The design criteria for railway projects are comparable in scope and nature to the preexisting design criteria for highway projects. Former subsection (c) is deleted because the specific provisions previously considered for a separate project development agreement will now be handled in a single pass-through toll agreement. This provides for a single definitive legal document and thus reduces the department's legal risk, and it also reflects the department's successful experience to date in negotiating pass-through agreements that are complete and comprehensive.

Section 5.59 is amended to clarify the distinction between the standards applicable to highways and those applicable to railways. New subsection (d) is added to establish maintenance standards for railways. The railway maintenance standards are comparable in scope and nature to the preexisting maintenance standards for highways.

COMMENTS

One comment was received, from the Southwest Commuter Rail Corporation of Texas. The comment states that the proposed rules are inconsistent with relevant statutes, cause the pass-through fare methodology to be legally inadequate and inequitable, and violate public policy.

The comment cites the reference to financing in Transportation Code, §91.075, as evidence that the commission is required to pay interest on bonds issued to finance a pass-through fare project. The commission disagrees with this reading of the statute. The statute is permissive in allowing, but not requiring, the department to enter pass-through fare agreements. The comment also errs in suggesting that the department would be placing limits on the use of reimbursed funds. Rather, the rules describe the basis on which the amount of the reimbursement will be calculated, a determination that is admittedly within the authority of the commission. How those funds are used after they are paid to the developer is not addressed by the rules.

The comment also states that the failure to reimburse a developer for interest expense makes the pass-through fare methodology inadequate and unfair. In support, the comment cites a case relating to condemnation. The analogy is not applicable. The department is constitutionally required to provide full reimbursement whenever property is taken without the owner's consent; the department is not constitutionally or statutorily required to provide full reimbursement for all costs in a pass-through fare agreement, which is entered only with the consent of both parties.

Finally, the comment asserts that public policy requires the reimbursement of interest expense. No articulated public policy is cited in support. In contrast, for example, the Texas Uniform Grant Management Standards do not require the payment of interest expense and indeed forbid it in some instances.

Overall, the comment mistakes the fundamental nature of a pass-through agreement. Pass-through agreements are not in the nature of public utility regulation, eminent domain, or loan guarantees. Rather, pass-through agreements are joint contractual endeavors in which the parties must agree on the distribution of costs and risks. In declining to reimburse a developer for its interest expenses, the department is properly using its discretion under the statute to set limits on the extent to which the department will bear the burden of the developer's costs and risks.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §222.104, which authorizes the department to enter agreements for pass-through tolls, and Transportation Code, §91.075, which authorizes the department to enter agreements for pass-through fares.

CROSS REFERENCE TO STATUTE

Transportation Code, §91.075, and §222.104.

§5.58. Project Development by Public or Private Entity.

(a) Social and environmental impact.

(1) General. A public or private entity that is responsible for the construction of a project shall conduct the environmental review and public involvement for the project in the manner prescribed by Chapter 2, Subchapter C of this title (relating to Environmental Review and Public Involvement for Transportation Projects). The department may choose to conduct the environmental review and public involvement.

(2) Department approval. The department must approve each environmental review under this section before construction of the project begins.

(b) Right of way and utilities.

(1) Responsibility. This subsection applies when the public or private entity is responsible for the acquisition of right of way or the adjustment of utilities.

(2) Right of way procedures.

(A) Manual requirements. The acquisition of right of way performed by or on behalf of the public or private entity shall comply with the latest version of each of the department's manuals.

(B) Alternative procedures. A public or private entity may request written approval to use a different accepted procedure for a particular item or phase of work. The use of an alternative procedure is subject to the approval of the Federal Highway Administration. The executive director may approve the use of an alternative procedure if the alternative procedure is determined to be sufficient to discharge the department's state and federal responsibilities in acquiring real property.

(3) Utility adjustments. The adjustment, removal, or relocation of utility facilities performed by or on behalf of the public or private entity shall comply with applicable federal and state laws and regulations.

(c) Design and construction.

(1) Responsibility. This subsection applies when the public or private entity is responsible for the design, construction, and, operation, as applicable, of each project it undertakes. This responsibility includes ensuring that all EPIC are addressed in project design and carried out during project construction and operation.

(2) Design criteria.

(A) State criteria. All designs developed by or on behalf of the public or private entity shall comply with the latest version of the department's manuals.

(i) Highway projects. Each highway project shall, at a minimum, comply with the:

(I) Roadway Design Manual;

(II) Pavement Design Manual;

(III) Hydraulic Design Manual;

(IV) Texas Manual on Uniform Traffic Control Devices;

(V) Bridge Design Manual; and

(VI) Texas Accessibility Standards.

(ii) Railway projects. Each railway project shall comply, at a minimum, with the current version of the American Railway Engineering and Maintenance of Right of Way Association standards.

(B) Alternative criteria. A public or private entity may request approval to use different accepted criteria for a particular item of work. Alternative criteria may include the latest version of the AASHTO Policy on Geometric Design of Highways and Streets, the AASHTO Pavement Design Guide, and the AASHTO Bridge Design Specifications. The use of alternative criteria is subject to the approval of the Federal Highway Administration or the Federal Railroad Administration for those projects involving federal funds. The executive director may approve the use of alternative criteria if the alternative criteria are determined to be sufficient to protect the safety of the traveling public and protect the integrity of the transportation system.

(C) Exceptions to design criteria. A public or private entity may request approval to deviate from the state or alternative criteria for a particular design element on a case-by-case basis. The request for approval shall state the criteria for which an exception is being requested and must include a comprehensive description of the circumstances and engineering analysis supporting the request. The executive director may approve an exception after determining that the particular criteria could not reasonably be met due to physical, environmental, or other relevant factors and that the proposed design is a prudent engineering solution.

(3) Access to a highway project.

(A) Access management. Access to a highway shall be in compliance with the department's access management policy.

(B) Interstate access. For proposed highway projects that will change the access control line to an interstate highway, the public or private entity shall submit to the department all data necessary for the department to request Federal Highway Administration approval.

(4) Preliminary design submission and approval. When design is approximately 30% complete or as otherwise provided in a pass-through agreement, the public or private entity shall send the following preliminary design information to the department for review and approval in accordance with the procedures and timeline established in the project development agreement described in subsection (d) of this section:

(A) for a highway project, a completed Design Summary Report form as contained in the department's Project Development Process Manual;

(B) a design schematic depicting plan, profile, and superelevation information for each roadway or a design schematic depicting plan, profile, and superelevation based on top of railway for each railway line;

(C) typical sections showing existing and proposed horizontal dimensions, cross slopes, location of profile grade line, pavement layer thickness and composition, earthen slopes, and right of way lines for each roadway or subballast and ballast layer thickness and composition for each railway line;

(D) bridge, retaining wall, and sound wall layouts;

(E) hydraulic studies and drainage area maps showing the drainage of waterways entering the project and local project drainage;

(F) an explanation of the anticipated handling of existing traffic during construction;

(G) when structures meeting the definition of a bridge as defined by the National Bridge Inspection Standards are proposed, an indication of structural capacity in terms of design loading;

(H) an explanation of how the U.S. Army Corps of Engineers permit requirements, including associated certification requirements of the Texas Commission on Environmental Quality, will be satisfied if the project involves discharges into waters of the United States; and

(I) for a highway project, the location and text of proposed mainlane guide signs shown on a schematic that includes lane lines or arrows indicating the number of lanes.

(5) Highway construction specifications.

(A) All plans, specifications, and estimates developed by or on behalf of the public or private entity for a highway project shall conform to the latest version of the department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and shall conform to department-required special specifications and special provisions.

(B) The executive director may approve the use of an alternative specification if the proposed alternative specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public.

(6) Railway construction specifications.

(A) All plans, specifications, and estimates developed by or for the public or private entity for a railway project shall conform to all construction and material specifications established in the American Railway Engineering and Maintenance of Right of Way Association standards.

(B) The executive director may approve the use of an alternative specification if the proposed alternative specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the public and the railway system.

(7) Submission and approval of final design plans and contract administration procedures. When final plans are complete, the public or private entity shall send the following information to the executive director for review and approval in accordance with the procedures and timelines established in the contract described in §5.56(b) of this chapter:

(A) seven copies of the final set of plans, specifications, and engineer's estimate (PS&E) that have been signed and sealed by the responsible engineer;

(B) revisions to the preliminary design submission previously approved by the department in a format that is summarized or highlighted for the department;

(C) a proposal for awarding the construction contract in compliance with applicable state and federal requirements;

(D) contract administration procedures for the construction contract with criteria that comply with the applicable national or state administration criteria and manuals; and

(E) the location and description of all EPIC addressed in construction.

(8) Construction inspection and oversight.

(A) Unless the department agrees in writing to assume responsibility for some or all of the following items, the public or private entity is responsible for:

(i) overseeing all construction operations, including the oversight and follow through with all EPIC;

(ii) assessing contract revisions for potential environmental impacts; and

(iii) obtaining any necessary EPIC required for contract revisions.

(B) The department may inspect the construction of the project at times and in a manner it deems necessary to ensure compliance with this section.

(9) Contract revisions. All revisions to the construction contract shall comply with the latest version of the applicable national or state administration criteria and manuals, and must be submitted to the department for its records. Any revision that affects prior environmental approvals or significantly revises project scope or the geometric design must be submitted to the executive director for approval prior to beginning the revised construction work. Procedures governing the executive director's approval, including time limits for department review, shall be included in the contract described in §5.56(b) of this chapter.

(10) As-built plans. Within six months after final completion of the construction project, the public or private entity shall file with the department a set of the as-built plans incorporating any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas certifying that the project was constructed in accordance with the plans and specifications.

(11) Document and information exchange. The public or private entity agrees to deliver to the department all materials used in the development of the project including aerial photography, computer files, surveying information, engineering reports, environmental documentation, general notes, specifications, and contract provision requirements.

(12) State and federal law. The public or private entity shall comply with all federal and state laws and regulations applicable to the project and the state highway system, and shall provide or obtain all applicable permits, plans, and other documentation required by a federal or state entity.

(d) Contracts. All contracts for the development, construction, or operation of a project shall be awarded in compliance with applicable law.

(e) Federal law. If any federal funds are used in the development or construction of a project under this subchapter, or if the department intends to fund pass-through toll payments with federal funds, the development and construction of the project shall be accomplished in compliance with all applicable federal requirements.

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 March 31, 2006.

TRD-200601965
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: April 20, 2006
Proposal publication date: February 10, 2006
For further information, please call: (512) 463-8683

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CHAPTER 21. RIGHT OF WAY
SUBCHAPTER O. UTILITY ACCOMMODATION FOR RAIL FACILITIES

43 TAC §§21.901 - 21.911

The Texas Department of Transportation (department) adopts new Subchapter O, Utility Accommodation for Rail Facilities, new §§21.901 - 21.911, concerning rail and utility safety. The new §§21.901 - 21.911 are adopted without changes to the proposed text as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8837) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

With the department's newly enhanced statutory authority to own and operate rail facilities, and a utility's current authority to locate facilities along state railroad right of way, guidance is needed to insure the safety of rail and utility facilities. The new rules will allow the two authorities to co-operatively function in the limited railroad right of way by prescribing safety standards for the installation of utility facilities.

New §21.901 identifies the purpose of the subchapter, which is to insure the safety of the state railroad right of way when utility facilities are placed in the right of way.

New §21.902 defines words and terms used in this subchapter. The definitions clarify the engineering terms, utility procedures and processes, job functions, and occupational and departmental titles used in the subchapter.

New §21.903 allows exceptions to the rules when extreme hardships or unusual conditions exist. Exceptions must be recommended by the district engineer and authorized by the Right of Way Division Director.

New §21.904 requires the execution of agreements if a utility installs, relocates, or maintains facilities along state railroad right of way. The agreements act as both a notice of installation and a vehicle for utilities to apprise the department of the type and location of the facilities being installed.

New §21.905 describes the agreement utilities must enter into with the department in order to install, relocate, or maintain lines on department property.

New §21.906 describes general design requirements for the installation, maintenance, and relocation of utilities within state railroad right of way. The section incorporates published utility industry safety standards to serve as minimum guidelines for utility facility installations.

New §21.907 requires occupying utilities to maintain their facilities in a good state of repair and outlines measures to be taken by a utility in an emergency maintenance situation. These standards will allow the department to more efficiently manage and protect the right of way.

New §21.908 requires a utility to take steps to preserve, restore, and clean up state railroad right of way. The subsection includes requirements to restore disturbed areas, provide for drainage of the railroad facility, clean up the right of way after installation or maintenance of utility facilities, and control vegetation. These provisions are designed to preserve the safety of the facility as well as to protect the right of way from damage.

New §21.909 describes the requirements for the installation, maintenance, and relocation of utility facilities paralleling state railroad property. The section addresses the safety standards for both overhead and underground installations.

New §21.910 describes the requirements for the installation, maintenance, and relocation of utility facilities crossing state railroad property. The section addresses the safety standards for overhead and underground installations with an emphasis on specifications regarding the design, pipeline thickness, and pipeline encasement necessary for underground installations.

New §21.911 requires the installing utilities to submit detailed plans and receive departmental approval for their proposed facilities. This provision is designed to allow the department to better manage its right of way.

COMMENTS

No comments on the proposed new sections were received.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.003, which provides the commission with the authority to establish rules to implement Transportation Code, Chapter 91.

CROSS REFERENCE TO STATUTE

Transportation Code, §91.105.

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 March 31, 2006.

TRD-200601966
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: April 20, 2006
Proposal publication date: December 30, 2005
For further information, please call: (512) 463-8683

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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: 16 TAC §82.120(b)

CURRICULUM FOR THE TEACHER'S CERTIFICATE 1,000 HOURS--MINIMUM OF 26 WEEKS			
(1)	orientation, consisting of		No credit
	(A)	rules and regulations of the school	
	(B)	introductions to school personnel and students	
	(C)	layout of school facilities	
(2)	instruction in theory, consisting of		125 hours
	(A)	lesson planning	15
	(B)	personality and professional conduct	15
	(C)	development of a barber course	15
	(D)	student learning principles	10
	(E)	principles of teaching	10
	(F)	basic teaching methods	10
	(G)	teaching aids	10
	(H)	testing	10
	(I)	Self evaluation	10
	(J)	teaching adults	10
	(K)	classroom problems	5
	(L)	classroom management	5
(3)	instruction in practical work, consisting of		875 hours
	(A)	assisting with senior students	346
	(B)	assisting with junior students	321
	(C)	theory class (assisting teacher, observing, teaching)	133
	(D)	learning office procedures and state laws	50
	(E)	grading test papers (assisting teacher, observing, grading)	25

Figure: 16 TAC §82.120(c)

CURRICULUM FOR THE CLASS A BARBER CERTIFICATE 1,500 HOURS--MINIMUM OF NINE MONTHS				
(1)	orientation, consisting of			No credit
	(A)	rules and regulations of the school		
	(B)	introduction to school personnel and students		
	(C)	outlay of school facilities conducted		
(2)	theory, consisting of			180 hours
	(A)	anatomy, physiology, and histology, consisting of the study of		50 hours
		(i)	Hair	
		(ii)	Skin	
		(iii)	Muscles	
		(iv)	Nerves	
		(v)	Cells	
		(vi)	circulatory system	
		(vii)	Digestion	
		(viii)	Bones	
	(B)	Texas barber law and rules		35
	(C)	bacteriology, sterilization, and sanitation		30
	(D)	disorders of the skin, scalp, and hair		10
	(E)	Salesmanship		5
	(F)	barbershop management		5
	(G)	chemistry		5
	(H)	Shaving		5
	(I)	scalp, hair treatments and skin		5
	(J)	Sanitary professional techniques		4
	(K)	professional ethics		4
	(L)	Scientific fundamentals of barbering		4
	(M)	cosmetic preparations		3
	(N)	shampooing and rinsing		2
	(O)	cutting and processing curly and over-curly hair		2
	(P)	haircutting, male and female		2
	(Q)	theory of massage of scalp, face and neck		2
	(R)	hygiene and good grooming		1
	(S)	barber implements		1
	(T)	honing and stropping		1
	(U)	mustaches and beards		1
	(V)	facial treatments		1
	(W)	electricity and light therapy		1
	(X)	history of barbering		1
(3)	instruction in practical work, consisting of the study of:			1312 hours
	(A)	dressing the hair, consisting of:		800
		(i)	men's haircutting	
		(ii)	children's haircutting	

		(iii)	women's haircutting	
		(iv)	cutting and processing curly and over-curly hair	
		(v)	razor cutting	
	(B)	Shaving		80
	(C)	Styling		55
	(D)	shampooing and rinsing		40
	(E)	bleaching and dyeing of the hair		30
	(F)	waving hair		28
	(G)	Straightening		25
	(H)	Cleansing		25
	(I)	professional ethics		22
	(J)	barbershop management		22
	(K)	hair weaving and hairpieces		17
	(L)	Processing		15
	(M)	Clipping		15
	(N)	beards and mustaches		15
	(O)	Shaping		15
	(P)	Dressing		15
	(Q)	Curling		15
	(R)	first aid and safety precautions		11
	(S)	scientific fundamentals of barbering		10
	(T)	barber implements		10
	(U)	haircutting or the process of cutting, tapering, trimming, processing, and molding and scalp, hair treatments, and tonics		10
	(V)	message and facial treatments		10
	(W)	Arranging		10
	(X)	Beautifying		10
	(Y)	Singeing		7
	(Z)	Manicuring		8

Figure: 16 TAC §82.120(d)

CURRICULUM FOR THE MANICURIST LICENSE 600 HOURS--MINIMUM OF 16 WEEKS			
(1)	orientation, consisting of		No credit
	(A)	rules and regulations of the school	
	(B)	introduction to school personnel and students	
	(C)	layout of school facilities	
(2)	instruction in theory, consisting of		45 hours
	(A)	bacteriology, sterilization, and sanitation	16
	(B)	manicuring, equipment, and procedures	4
	(C)	the nail and disorders	4
	(D)	Texas barber law and rules	4
	(E)	anatomy and physiology	4
	(F)	skin	4
	(G)	professional ethics	3
	(H)	hygiene and good grooming	3
	(I)	advanced nail techniques	3
(3)	instruction in practical work, consisting of:		555 hours
	(A)	shaping nails	96
	(B)	applying polish	74
	(C)	trimming cuticle and buffing nails	59
	(D)	hand and arm massage	57
	(E)	removal of polish	57
	(F)	application of artificial and gel nails	44
	(G)	applying cuticle remover and loosening	40
	(H)	preparation of manicure table	40
	(I)	softening cuticle	37
	(J)	bleaching under free edge	18
	(K)	cleaning under free edge	18
	(L)	applying cuticle oil or cream	15

Figure: 16 TAC §82.120(e)

CURRICULUM FOR THE BARBER TECHNICIAN LICENSE 300 HOURS--MINIMUM OF EIGHT WEEKS			
(1)	orientation, consisting of		No credit
	(A)	rules and regulations of the school	
	(B)	introduction to school personnel and students	
	(C)	layout of school facilities	
(2)	instruction in theory, consisting of		45 hours
	(A)	hygiene, bacteriology, sterilization, and sanitation	18
	(B)	common disorders of the skin; facial treatments	4
	(C)	shampooing, equipment, and procedures	4
	(D)	Texas barber law and rules	4
	(E)	cosmetic applications and massage	3
	(F)	professional ethics	3
	(G)	good grooming; preparing patron and making appointments	3
	(H)	theory of massage, and structure of head, neck, and face	2
	(I)	rinsing, types and procedures	2
	(J)	scalp and hair treatments	2
(3)	instruction in practical work, consisting of		255 hours
	(A)	application of shampoo and shampooing	45
	(B)	application of rinses and removal	35
	(C)	makeup application	33
	(D)	facial manipulations	20
	(E)	application of conditioner and rinsing	20
	(F)	scalp manipulations	20
	(G)	brushing and drying	18
	(H)	sanitation and sterilization	15
	(I)	draping and scalp examination	11
	(J)	application and removal of creams	10
	(K)	application and removal of packs	8
	(L)	set-up for facial	8
	(M)	preparation of work area for shampooing	7
	(N)	patron protection	5

Figure: 16 TAC §82.120(f)

CURRICULUM FOR A BARBER REFRESHER COURSE 300 HOURS			
(1)	theory instruction in Texas barber law and rules		10 hours
(2)	instruction in practical work, to include		290 hours
	(A)	Haircutting	160
	(B)	Permanent waving and chemical application	75
	(C)	styling, curling, and blow-drying	55

Figure: 25 TAC §157.34(b)(4)(B)

CONTENT AREAS	ECA	EMT-B	EMT-I	EMT-P
PREPARATORY	3	6	9	12
AIRWAY MGMT / VENTILATION	3	6	9	12
PATIENT ASSESSMENT	2	4	6	8
TRAUMA	3	6	9	12
MEDICAL	9	18	27	36
SPECIAL CONSIDERATIONS	3	6	9	12
CLINICALLY RELATED OPERATIONS	1	2	3	4
TOTAL MINIMUM CONTACT HOURS	24	48	72	96

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.

Department of Aging and Disability Services

Open Solicitation for Real County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324(b), primary selection process, the Department of Aging and Disability Services (DADS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Real County, County #193**. Medicaid nursing facility occupancy rates in **Real County** exceeded the 90% occupancy threshold for six consecutive months during the period of **September 2005 through February 2006**. The county occupancy rates for each month of that period were: **90.5%, 98.2%, 99.2%, 95.1%, 95.0%, 96.9%**. In accordance with the requirements contained in 40 TAC §19.2324(b), current nursing facility licensees or property owners of currently licensed nursing facilities may apply for an additional allocation of Medicaid beds. The allocation of additional Medicaid beds is restricted to nursing facility beds that are currently licensed and may be converted to Medicaid-certified beds. Applicants for additional Medicaid beds must demonstrate a history of quality care as specified in 40 TAC §19.2322(e). Applicants must submit a written reply as described in 40 TAC §19.2324(b)(5) to Joe D. Armstrong, Department of Aging and Disability Services, Licensing and Credentialing Section, Regulatory Services, Mail Code E-342, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by DADS before the close of business May 15, 2006, the published ending date of the open solicitation period. If one or more applicants are eligible for additional Medicaid beds, DADS will allocate Medicaid beds in accordance with 40 TAC §19.2324(b)(6) and (7). If the number of beds allocated under the primary selection process does not reduce the occupancy rate below 90%, DADS will place another public notice in the *Texas Register* in accordance with secondary selection process requirements.

TRD-200602017
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Filed: April 5, 2006

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 24, 2006, through March 30, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on April 5, 2006. The public comment period for these projects will close at 5:00 p.m. on May 5, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Bend Petroleum Corporation; Location: The project is located within the Bessie Heights Oil and Gas Field (Stark No. 17 Well Site), in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Terry, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 409295; Northing: 3323837. Project Description: The applicant proposes to refurbish 2,073 feet of existing access road for expansion of the existing Stark No. 17 well site, located within the Bessie Heights Oil and Gas Field, in Orange County, Texas. The expansion work at the Stark No. 17 well measures 250 feet by 175 feet, including the placement of an associated (standard) ring levee. The 2,073-foot road consists of a (currently degraded) shell and earthen access road typically used in drilling activities. The well pad site itself consists of a mixture of shell and earthen fill with marginal, subsided low-lying marsh wetlands, a condition typical of non-active drill sites in the area that have become naturalized to a minor extent. The total project impact to jurisdictional waters of the U. S. (including wetlands) is estimated at 1.5 acres. CCC Project No.: 06-0229-F1; Type of Application: U.S.A.C.E. permit application #24072 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200602012
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: April 5, 2006

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Notice of Availability of Coastal Management Program Grants Funds

The Coastal Coordination Council (Council) files this Notice of Funds Availability to announce the availability of §306/§306A federal grant funds under the Texas Coastal Management Program (CMP). The purpose of the CMP is to improve the management of the state's coastal resources and to ensure the long-term ecological and economic productivity of the coast.

A federal award to the state of approximately $2 million in §306/§306A funding is expected in October 2007. The Council, which oversees the implementation of the CMP, passes through approximately 90% of the available §306/§306A funds to eligible entities in the coastal zone to support projects that implement and/or advance the CMP goals and policies.

Eligible Applicants

The following entities are eligible to receive grants under the CMP:

1. Incorporated cities in the coastal zone.

2. County governments in the coastal zone.

3. Texas state agencies.

4. Texas public universities (including colleges and institutions of higher education).

5. Subdivisions of the state with jurisdiction in the coastal zone (e.g., navigation districts, port authorities, river authorities, and Soil and Water Conservation Districts with jurisdiction in the coastal zone).

6. Councils of governments and other regional governmental entities in the coastal zone.

7. The Galveston Bay Estuary Program.

8. The Coastal Bend Bays and Estuaries Program.

9. Nonprofit organizations located in Texas that are nominated by an eligible entity in categories 1 - 8 above. A nomination may take the form of a resolution or letter from a responsible official of an entity in categories 1 - 8. The nominating entity is not expected to financially or administratively contribute to the management and implementation of the proposed project.

Funding Categories

The Council will accept applications for projects that address any of the following funding categories. The categories are not listed in order of preference.

1. Coastal Natural Hazards Response

2. Critical Areas Enhancement

3. Shoreline Access

4. Water Quality Improvement

5. Waterfront Revitalization and Ecotourism Development

6. Permit Streamlining/Assistance and Governmental Coordination

7. Information and Data Availability

8. Public Education and Outreach

Grant workshops will be held in five coastal cities to help potential applicants through the Guidance and Application Package. Grant workshops are opportunities for potential applicants to learn about the changes made to the grant program and to discuss specific project ideas with staff. Applicants are not required to attend a workshop, but attendance is strongly encouraged.

Current subrecipients of CMP grant funding and their financial staff are also encouraged to attend the grant workshops. Grant workshops will be expanded this year to include project management training to educate subrecipients of the administrative requirements once a contract is executed. Project management training will cover the progress report, invoice, local match, budget amendment, timesheet, and equipment forms.

May 10, 2006, 10:30 a.m., Port Lavaca, City Hall, 202 N. Virginia.

May 16, 2006, 10:30 a.m., Port Arthur, City Hall, 444 Fourth Street, 5th Floor.

May 17, 2006, 9:30 a.m., Clear Lake Shores, City Hall, 931 Cedar Road.

May 23, 2006, 1:00 p.m., Corpus Christi, Texas A&M University - Natural Resources Center, 6300 Ocean Drive, Room 1003.

May 24, 2006, 9:30 a.m., Port Isabel, Port Isabel Housing Authority - Community Center, 100 Hockaday.

To obtain a copy of the Guidance and Application Package, please contact Melissa Porter at (512) 475-1393, (800) 998-4GLO or at melissa.porter@glo.state.tx.us. The requirements to receive federal grant funds are outlined in the guidance. Written requests for the Guidance and Application Package should be addressed to: Coastal Coordination Council, CMP Grants Program, c/o Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873. The Guidance and Application Package is also available on the GLO's website at: http://www.glo.state.tx.us/coastal/grants/index.html.

The deadline for receiving draft grant applications is Wednesday, June 21, 2006 by 5:00 p.m. Submission of a draft grant application is optional but is strongly recommended for first-time and/or inexperienced applicants. Written comments will only be provided to applicants who submit draft grant applications by June 21, 2006 by 5:00 p.m. The deadline for receiving final grant applications is Wednesday, October 11, 2006 by 5:00 p.m. Draft grant applications and final grant applications must be mailed (regular, express, or certified) or hand-delivered to: Coastal Coordination Council, CMP Grants Program, c/o Texas General Land Office, Stephen F. Austin Building, Room 335, 1700 North Congress Avenue, Austin, Texas 78701-1495. Facsimiles, electronic mail transmissions, and applications postmarked on or after the due date will not be accepted.

TRD-200602011
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: April 5, 2006

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/10/06 - 04/16/06 is 18% for Consumer[1]/Agricultural/Commercial[2] credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/10/06 - 04/16/06 is 18% for Commercial over $250,000.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-200601990
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 4, 2006

♦ ♦ ♦

Texas Education Agency

Notice of Correction

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-06-009 concerning the Texas Science, Technology, Engineering, and Math Academies (Texas STEM Academies) - Implementation Grants in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1350).

The TEA is amending the Deadline for Receipt of Applications paragraph in the *Texas Register* notice to read, "Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Tuesday, April 11, 2006, to be considered for funding." This correction amends the originally-published deadline date of Tuesday, May 23, 2006, and is reflective of the deadline stated in the announcement letter and RFA posted on the TEA website at http://www.tea.state.tx.us/opge/disc/index.html.

Further Information. For clarifying information about the RFA, contact Karen Harmon, Division of Discretionary Grants, TEA, (512) 463-9269.

TRD-200602021
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: April 5, 2006

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Notice of Correction

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-06-011 concerning the Texas Science, Technology, Engineering, and Math Academies (Texas STEM Academies) - Startup Grants in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1350).

The TEA is amending the Deadline for Receipt of Applications paragraph in the *Texas Register* notice to read, "Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Tuesday, May 23, 2006, to be considered for funding." This correction amends the originally-published deadline date of Thursday, May 18, 2006, and is reflective of the deadline stated in the announcement letter and RFA posted on the TEA website at http://www.tea.state.tx.us/opge/disc/index.html.

Further Information. For clarifying information about the RFA, contact Karen Harmon, Division of Discretionary Grants, TEA, (512) 463-9269.

TRD-200602023
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: April 5, 2006

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Notice of Correction

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-06-010 concerning the Texas Science, Technology, Engineering, and Math Centers (Texas STEM Centers) Grants in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1351).

The TEA is amending the Deadline for Receipt of Applications paragraph in the *Texas Register* notice to read, "Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, May 18, 2006, to be considered for funding." This correction amends the originally-published deadline date of Tuesday, April 18, 2006, and is reflective of the deadline stated in the announcement letter and RFA posted on the TEA website at http://www.tea.state.tx.us/opge/disc/index.html.

Further Information. For clarifying information about the RFA, contact Karen Harmon, Division of Discretionary Grants, TEA, (512) 463-9269.

TRD-200602022
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: April 5, 2006

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Request for eGrant Applications Concerning Correspondence Coursework Program for Migrant Secondary Students, 2006-2007

Eligible Applicants. The Texas Education Agency (TEA) is requesting eGrant applications under Request for Applications (RFA) #701-06-016 from colleges and universities in Texas with credit-granting high school distance learning/correspondence coursework that meets Texas graduation plan requirements. Courses approved by the TEA must already be in place. Eligible applicants must demonstrate a full understanding of the needs of migrant secondary students in Texas and must demonstrate the capacity and ability to implement, operate, and manage the project on a statewide and nationwide basis.

Description. The purpose of the Correspondence Coursework Program for Migrant Secondary Students is to provide alternative ways for migrant secondary students to earn credits toward high school graduation. The applicant selected for funding will work on an intrastate and interstate basis (with migrant projects both in Texas and up to 48 different states that receive Texas migrant students) to assign correspondence coursework that meets individual students' graduation plan requirements; to operate a toll-free 800 telephone number to provide bilingual direct instructional support to students; to implement strategies resulting in a correspondence course completion rate of at least 75 percent; to offer a variety of grading options for the coursework; to issue credit; to inform the appropriate Texas or out-of-state school district/migrant education project of the credit granted; to record information on the state's migrant student database; to provide preparation materials for the exit-level Texas Assessment of Knowledge and Skills; to implement promotional activities resulting in at least 1,100 migrant student enrollments; to maintain communication with participating migrant students and educators inside and outside Texas; and to provide a recognition activity for participating students who complete coursework.

Dates of Project. The Correspondence Coursework Program for Migrant Secondary Students will be implemented during the 2006-2007 school year. Applicants should plan for a starting date of no earlier than September 1, 2006, and an ending date of no later than August 31, 2007. The applicant selected for funding under this grant program is eligible to receive project funding for a second year. Continuation funding for the second year will be based on satisfactory progress of the grant objectives and activities; general budget approval by the commissioner of education; continued funding by the U. S. Congress; and submission of a request for continuation funding in the format and at the time requested by the TEA.

Project Amount. Funding will be provided for one statewide project. The project will receive a maximum of $350,000 for the 2006-2007 school year. This project is funded 100 percent from Migrant Education Program federal funds.

Selection Criteria. Applications will be scored based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Obtaining Access to TEA's eGrants. The Correspondence Coursework Program for Migrant Secondary Students grant application is available only through TEA's eGrants and may not be obtained or submitted by any other means. The eGrant application will be available in eGrants on or about April 17, 2006. To apply for access to eGrants, go to http://www.tea.state.tx.us/opge/egrant/index.html. Under the "eGrants Toolbox," select "Apply for eGrants Logon." Complete the form as instructed, obtain the required signatures, and send it to the TEA contact listed on the form.

Further Information. For clarifying information about the eGrant RFA, contact Donnell Bilsky, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269.

Deadline for Receipt of eGrant Applications. Applications must be received by the Texas Education Agency by 5:00 p.m. (Central Time), May 25, 2006, to be considered for funding.

TRD-200602018
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: April 5, 2006

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Request for eGrant Applications Concerning the Summer Work Study Program for Migrant Secondary Students, 2006-2007

Eligible Applicants. The Texas Education Agency (TEA) is requesting eGrant applications under Request for Applications (RFA) #701-06-015 from colleges and universities in Texas. Eligible applicants must demonstrate a full understanding of the needs of migrant secondary students in Texas and must demonstrate the capacity and ability to implement, operate, and manage the project on a statewide basis.

Description. The purpose of the Summer Work Study Program for Migrant Secondary Students is to provide, at a minimum, 100 eligible migrant students with a six-week college or university work study experience by providing them dormitory housing on campus; by paying them a minimum wage stipend, paid by the partnership entity, for meaningful work experience in an office setting; and by providing participating students alternative ways to earn credits toward high school graduation in a college or university setting.

Dates of Project. The Summer Work Study Program for Migrant Secondary Students will be implemented during the 2006-2007 school year. Applicants should plan for a starting date of no earlier than September 1, 2006, and an ending date of no later than August 31, 2007. The applicant selected for funding under this grant program is eligible to receive project funding for a second year. Continuation funding for the second year will be based on satisfactory progress of the grant objectives and activities; general budget approval by the commissioner of education; continued funding by the U. S. Congress; and submission of a request for continuation funding in the format and at the time requested by the TEA.

Project Amount. Funding will be provided for one statewide project. The project will receive a maximum of $100,000 for the 2006-2007 school year. This project is funded 100 percent from Migrant Education Program federal funds.

Selection Criteria. Applications will be scored based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. Applicants must partner with an entity that has the capacity to provide funding to pay students a minimum wage for participating in a meaningful work experience in an office setting. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Obtaining Access to TEA's eGrants. The Summer Work Study Program for Migrant Secondary Students grant application is available only through TEA's eGrants and may not be obtained or submitted by any other means. The eGrant application will be available in eGrants on or about April 17, 2006. To apply for access to eGrants, go to http://www.tea.state.tx.us/opge/egrant/index.html. Under the "eGrants Toolbox," select "Apply for eGrants Logon." Complete the form as instructed, obtain the required signatures, and send it to the TEA contact listed on the form.

Further Information. For clarifying information about the eGrant RFA, contact Donnell Bilsky, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269.

Deadline for Receipt of eGrant Applications. Applications must be received by the Texas Education Agency by 5:00 p.m. (Central Time), May 25, 2006, to be considered for funding.

TRD-200602019
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: April 5, 2006

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Request for eGrant Applications Concerning the Texas Migrant Interstate Program, 2006-2007

Eligible Applicants. The Texas Education Agency (TEA) is requesting eGrant applications under Request for Applications (RFA) #701-06-014 from public school districts, including open-enrollment charter schools; education service centers; and colleges and universities in Texas. Eligible applicants must demonstrate a full understanding of the needs of migrant secondary students in Texas and must demonstrate the capacity and ability to implement, operate, and manage the project on a statewide and nationwide basis.

Description. The purpose of the Texas Migrant Interstate Program (TMIP) is to provide direct services and technical assistance related to intrastate and interstate coordination to Texas migrant students and their families and migrant education program staff within and outside Texas. To assist in meeting the needs of this population, which is most at risk of not meeting the state's academic content and achievement standards, the TMIP will coordinate with states that receive this target population by offering certified bilingual counselors to work with migrant students, home-based district personnel, migrant parents, and migrant education program personnel in the receiving state on issues such as appropriate student placement, credit accrual, and state achievement testing.

Dates of Project. The TMIP will be implemented during the 2006-2007 school year. Applicants should plan for a starting date of no earlier than September 1, 2006, and an ending date of no later than August 31, 2007. The applicant selected for funding under this grant program is eligible to receive project funding for a second year. Continuation funding for the second year will be based on satisfactory progress of the grant objectives and activities; general budget approval by the commissioner of education; continued funding by the U. S. Congress; and submission of a request for continuation funding in the format and at the time requested by the TEA.

Project Amount. Funding will be provided for one statewide project. The project will receive a maximum of $500,000 for the 2006-2007 school year. This project is funded 100 percent from Migrant Education Program federal funds.

Selection Criteria. Applications will be scored based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Obtaining Access to TEA's eGrants. The TMIP grant application is available only through TEA's eGrants and may not be obtained or submitted by any other means. The eGrant application will be available in eGrants on or about April 17, 2006. To apply for access to eGrants, go to http://www.tea.state.tx.us/opge/egrant/index.html. Under the "eGrants Toolbox," select "Apply for eGrants Logon." Complete the form as instructed, obtain the required signatures, and send it to the TEA contact listed on the form.

Further Information. For clarifying information about the eGrant RFA, contact Donnell Bilsky, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269.

Deadline for Receipt of eGrant Applications. Applications must be received by the Texas Education Agency by 5:00 p.m. (Central Time), May 25, 2006, to be considered for funding.

TRD-200602020
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: April 5, 2006

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Texas Commission on Environmental Quality

Notice of Comment Period and Announcement of Public Meeting on Proposed Air Quality Standard Permits for Boilers

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and will conduct a public meeting to receive testimony concerning the proposed standard permit for boilers for issuance under Texas Health and Safety Code, Texas Clean Air Act, §382.05195, Standard Permit, and 30 TAC Chapter 116, Subchapter F, Standard Permits.

PROPOSED STANDARD PERMIT

The TCEQ is proposing a new air quality standard permit for boilers. This new standard permit will not replace the current permit by rule (PBR), 30 TAC §106.183, Boilers, Heaters, and Other Combustion Devices, for boilers under 40 million British thermal units per hour (MMBtu/hr) but will provide another authorization mechanism for boilers greater than 40 MMBtu/hr.

The New Source Review Program under Chapter 116 requires any person who plans to construct any new facility or to engage in the modification of any existing facility that may emit air contaminants into the air of the state to obtain a permit in accordance with 30 TAC §116.111, General Application; satisfy the *de minimis* criteria of 30 TAC §116.119, De Minimis Facilities or Sources; or satisfy the conditions of a standard permit, a flexible permit, or a permit by rule before any actual work is begun on the facility. A standard permit authorizes the construction or modification of new or existing facilities that are similar in terms of operations, processes, and emissions.

A standard permit is subject to the procedural requirements of 30 TAC §116.603, Public Participation in Issuance of Standard Permits, which includes a 30-day public comment period and a public meeting to provide an additional opportunity for public comment. Any person who may be affected by the emission of air pollutants from facilities that may be registered under the standard permit is entitled to submit written or verbal comments regarding the proposed standard permit.

PUBLIC MEETING

A public meeting on the standard permit for boilers will be held in Austin, Texas. The meeting will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the meeting; however, TCEQ staff will be available to discuss the proposed standard permit for boilers 30 minutes prior to the meeting and staff will also answer questions after the meeting. The public meeting will be held on May 16, 2006, at 10:00 a.m, at the Texas Commission on Environmental Quality in Building B, Room 201A, 12100 Park 35 Circle, Austin, Texas.

PUBLIC COMMENT AND INFORMATION

Copies of the proposed standard permit for boilers may be obtained from the TCEQ web site at *http://www.tceq.state.tx.us/permitting/air/nav/nsr_news.html* or by contacting the TCEQ, Office of Permitting, Remediation, and Registration, Air Permits Division, at (512) 239-1250. Comments may be mailed to Ms. Beryl Thatcher, Texas Commission on Environmental Quality, Office of Permitting, Remediation, and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments should reference the proposed standard permit for boilers. Comments must be received by 5:00 p.m. on May 19, 2006. To inquire about the submittal of comments or for further information, contact Ms. Thatcher at (512) 239-5374.

Persons who have special communication or other accommodation needs who are planning to attend the public meeting should contact the TCEQ at (512) 239-1250. Requests should be made as far in advance as possible.

TRD-200602016
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: April 5, 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 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.

Public notices issued by the Office of the Chief Clerk are also available for viewing at www.tceq.state.tx.us/comm_exec/cc/cc_db.html.

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-200602014
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 5, 2006

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Notice of Public Meeting and a Proposed Major Amendment of a General Permit Authorizing the Discharge of Storm Water Associated with Industrial Activities

Under §26.040 of the Texas Water Code, the Texas Commission on Environmental Quality (TCEQ) proposes to amend and renew a general permit (Texas Pollutant Discharge Elimination System Permit No. TXR050000) covering eligible storm water discharges and certain types of non-storm water discharges to surface water in the state. The proposed general permit applies to the entire state of Texas.

PROPOSED GENERAL PERMIT. The Executive Director has prepared a draft major amendment of an existing general permit that authorizes the discharge of storm water associated with industrial activity and certain types of non-storm water from industrial activities that are grouped into thirty (30) similar sectors based on Standard Industrial Classification Codes and Industrial Activity Codes. The proposed changes to the general permit include: removal of the requirement for a facility owner to sign the application for permit coverage; revisions to the annual discharge monitoring report requirements to require reporting of results of compliance with numeric effluent limits; revisions to benchmark reporting requirements; addition of requirement to maintain a rain gauge for determination of representative storm events; and revision of Sector J, related to Mineral Mining and Processing Facilities, to require alternative permit coverage for certain quarries that are addressed in the Texas Water Code, at §26.553. The general permit specifies which facilities must obtain permit coverage, which are eligible for a conditional exclusion based on no exposure of industrial activity to storm water, which are eligible for coverage without submitting a notice of intent, and which must obtain individual permit coverage. Non-storm water discharges that are not specifically listed in the general permit are not authorized by the general permit. No significant degradation of high quality waters is expected, and existing uses will be maintained and protected. Operators of facilities discharging storm water runoff from activities described by Standard Industrial Classification Code 4225 (General Warehousing and Storage) are hereby notified that the proposed general permit would provide coverage for certain facilities without submittal of a notice of intent, provided that certain technical requirements are met.

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 draft 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 are available at http://www.tceq.state.tx.us/goto/draftmsgp.

PUBLIC COMMENTS/PUBLIC MEETING. You may submit public comments about this general permit in writing or orally at the public meeting held by the TCEQ. The purpose of a public meeting is to provide an opportunity to submit comments and to ask questions about the general permit. A public meeting is not a contested case hearing. The public comment period will end at the conclusion of the public meeting. The TCEQ will hold a public meeting on this general permit: 2:00 p.m., May 19, 2006; Texas Commission on Environmental Quality; 12100 Park 35 Circle; Building F, Room 2210; Austin, Texas 78753.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 by the end of the public comment period on May 19, 2006.

APPROVAL PROCESS. After the comment period, the Executive Director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled Commission meeting when the Commission will consider approval of the general permit. The Commission will consider all public comment in making its decision and will either adopt the Executive Director's response or prepare its own response. The Commission will issue its written response on the general permit at the same time the Commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the Commission's action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the Commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register*.

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 the 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 the permit 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 the TCEQ's Water Quality Division, Storm Water and Pretreatment Team, at (512) 239-4671.

Si desea informacion en Espanol, puede llamar 1-800-687-4040.

TRD-200601994
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 4, 2006

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 114

The Texas Commission on Environmental Quality will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning state implementation plans (SIPs).

The proposed rulemaking would implement House Bill 3469 and House Bill 2481, 79th Legislature, 2005. The proposed rulemaking would establish rules for the Texas Clean School Bus Program as directed by House Bill 3469. The proposed rulemaking would also clarify cost effectiveness requirements for the Texas Emissions Reduction Plan, establish a rebate grant program as part of the Texas Emissions Reduction Plan, and provide for clarification of scrappage requirements for repower and replacement projects under the Texas Emissions Reduction Plan grant program as provided in House Bill 2481.

A public hearing on this proposal will be held in Austin, Texas on May 9, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Holly Vierk, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

Comments may be submitted to Holly Vierk, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2006-016-114-EN. Comments must be received by 5:00 p.m., May 16, 2006. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Erik Gribbin, Air Quality Planning and Implementation Division, at (512) 239-2590.

TRD-200601935
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: March 31, 2006

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 291, Utility Regulations

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct a public hearing to receive comments concerning revisions to 30 TAC Chapter 291, Utility Regulations, under the requirements of Texas Health and Safety Code, §382.017, and Texas Government Code, Chapter 2001, Subchapter B.

A public hearing on this proposal will be held in Austin on May 4, 2006, at 10:00 a.m., at the TCEQ complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

The proposed revisions to Chapter 291 implement Texas Water Code (TWC), §13.004, as added by House Bill (HB) 1358, 79th Legislature, 2005; TWC, §13.187(c), as amended by HB 2301, 79th Legislature; and TWC, §13.145, as amended by Senate Bill (SB) 1063, 79th Legislature. SB 1063 also removes a provision enacted by SB 2, 77th Legislature, 2001, that exempts from specific requirements a public utility that provided service in only 24 counties on January 1, 2003. TWC, §13.004 outlines the jurisdiction of the commission over certain water supply or sewer service corporations. TWC, §13.187(c) clarifies that the regulatory authority may disallow nonsupported costs in a rate application. Additionally, new subsection (b) of TWC, §13.145 states, "this section does not apply to a public utility that provided utility service in only 24 counties on January 1, 2003." Finally, the commission proposes revisions to Chapter 291 relating to when a utility may not recover rate case expenses, which may include attorney fees and expert witness fees incurred as a result of a rate change application.

Persons planning to attend the hearing who have special communication or other accommodation needs should contact Lola Brown, Office of Legal Services, at (512) 239-0348. Requests should be made as far in advance as possible.

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-061-291-PR. Comments must be received by 5:00 p.m., May 15, 2006. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Doug Holcomb, Utilities and Districts Section, at (512) 239-4691.

TRD-200601946

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: March 31, 2006

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Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapter 293

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive comments concerning revisions to 30 TAC Chapter 293, Water Districts, under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bills 828, 1208, 1644, 1673, and 1763 and Senate Bill 693, 79th Legislature, 2005, Regular Session. The proposed rulemaking would provide certain districts greater flexibility in contracting and in funding of certificate of convenience and necessity costs; allow a water supply corporation in converting to a special utility district to request certain powers to be considered and granted by the commission; modify notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts; provide for consistency between bond anticipation note rules and feasibility rules; clarify application requirements for a district to obtain road utility district powers; and provide for application requirements for a district to obtain commission approval of road bonds.

A public hearing on this proposal will be held in Austin on May 11, 2006, at 10:00 a.m. in Building B, Room 201A, at the commission's central office, located at 12100 North IH-35. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals wishing to present oral statements will be asked to register. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-058-293-PR. Comments must be received by 5:00 p.m., May 15, 2006. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Randy Nelson, Utilities and Districts Section, at (512) 239-6160.

TRD-200601936
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: March 31, 2006

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Notice of Water Quality Applications

The following notices were issued during the period of March 28, 2006 through March 31, 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 BARTLETT has applied for a renewal of TPDES Permit No. 10880-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 325,000 gallons per day. The facility is located approximately 0.5 mile northeast of the intersection of State Highway 95 and Farm-to-Market Road 487 in the City of Bartlett in Bell County, Texas.

D-BAR-B WATER-WASTEWATER SUPPLY CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014628001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The facility is located approximately one half mile north of the point where Dowdy Ferry Road crosses the Trinity River, on the east side of Dowdy Ferry Road in Dallas County, Texas.

EXXONMOBIL OIL CORPORATION which operates the Houston Olefins Plant, a petrochemical plant manufacturing ethylene, propylene, crude butadiene, and crude benzene (dripoline), has applied to for a major amendment to TPDES Permit No. WQ0000393000 to authorize the addition of Outfall 102, that will discharge storm water and specified non-storm water discharges on an intermittent and flow variable basis. The current permit authorizes the discharge of treated process wastewater and utility wastewaters, hydrostatic test water, and storm water at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 001 and storm water following first flush and incidental discharges of process wastewater, utility wastewater, and hydrostatic test water on an intermittent and flow variable basis via Outfall 002. The facility is located at 9822 La Porte Freeway in the City of Houston, Harris County, Texas. The effluent is discharged to an unnamed drainage ditch located on adjacent property; thence to Sims Bayou Tidal, part of the Houston Ship Channel/Buffalo Bayou Tidal, in Segment No. 1007 of the San Jacinto River Basin.

CITY OF PARIS has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 10479-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,250,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of the sludge land application site which consists of approximately 170 acres. The current permit authorizes the land application of sewage sludge for beneficial use on 170 acres. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES program. The facility is located approximately one half mile east of U.S. Highway 271 and 1.7 miles northeast of the intersection of Farm-to-Market Road 1499 and U.S. Highway 271, six miles north of the City of Paris in Lamar County, Texas. The irrigation and sludge disposal site are located approximately three miles northeast of the wastewater treatment plant.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TPDES Permit No. 11718-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located 500 feet east of Park Road 48 and approximately 3,500 feet due south of the intersection of U. S. Highway 190 and Park Road 48 in Jasper County, Texas.

TRD-200602015

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 5, 2006

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Notice of Water Rights Application

Notice issued March 31, 2006:

NOTICE OF AN APPLICATION FOR AN EXTENSION OF TIME TO COMPLETE CONSTRUCTION OF A PROJECT AUTHORIZED BY AN AGREED ORDER TO CERTIFICATE OF ADJUDICATION NO. 21-3214; City of Corpus Christi, P.O. Box 9277, Corpus Christi, Texas 78469, as applicant and managing entity; the Nueces River Authority, P.O. Box 349, Uvalde, Texas 78802; and the City of Three Rivers, P.O. Drawer 580, Three Rivers, Texas 78071; applicants, have applied to the Texas Commission on Environmental Quality (TCEQ) for an Extension of Time to Complete Construction pursuant to 11.145, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Subparagraph 2.f.2. of the April 5, 2001 Agreed Order to Certificate of Adjudication No. 21-3214 states that the applicants to construct and operate a conveyance facility to deliver water from the Nueces River , Nueces River Basin to the Upper Rincon Bayou, San Antonio-Nueces Coastal Basin. Subparagraph 2.f.4. of the Agreed Order states that construction necessary to implement subparagraph 2.f.1. shall be accomplished by December 31, 2001, and work necessary to accomplish subparagraph 2.f.2. shall be accomplished by January 31, 2002. The most current modification to the Agreed Order was issued on June 16, 2005 which extended the date to accomplish subparagraph 2.f.2. to January 31, 2006. The applicants seek authorization for a third extension of time to modify subparagraph 2.f.4. of the April 5, 2001 Agreed Order to extend the date necessary to accomplish subparagraph 2.f.2. to January 31, 2007. The Commission shall consider whether there has been sufficient due diligence and justification for delay for the City to complete the work required by subparagraphs 2.f.1 and 2.f.2 of the April 5, 2001 Agreed Order, and decide whether the privileges granted in that order shall be allowed to automatically terminate, thereby reinstating the provisions of the April 28, 1995 Agreed Order. The application and a portion of the required fees were received on December 16, 2005. Additional information and fees were received on January 17, 2006. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on January 31, 2006. Written public comments and requests for a public meeting should be received in 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. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200602013
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 5, 2006

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 15, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 15, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Beacon Estates Water Supply Corporation; DOCKET NUMBER: 2006-0129-PWS-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN101262897; LOCATION: Brookshire, Waller County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and (f)(1)(B), §290.122(a)(4) and (c)(2)(A), and THSC, §341.033(d), by failing to collect and submit routine bacteriological samples, by failing to post public notice of the violation, by exceeding the acute maximum contaminant level for coliform bacteria, and by failing to rescind the boil water notice (BWN) in the same manner as initiating the BWN;

and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay public health service fees; PENALTY: $2,340; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Dinesh Patel dba Benbrook Corner Store; DOCKET NUMBER: 2005-2033-PST-E; IDENTIFIER: RN101537983; LOCATION: Benbrook, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §334.50(b)(1)(A) and (2) and the Code, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases and by failing to provide proper release detection; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; PENALTY: $5,520; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Buddy's Testers, Inc.; DOCKET NUMBER: 2006-0248-WQ-E; IDENTIFIER: RN101903219; LOCATION: Sweetwater, Nolan County, Texas; TYPE OF FACILITY: oil field equipment; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a)(1)(ii), by failing to obtain authorization to discharge storm water associated with industrial activity to water in the state; PENALTY: $640; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(4) COMPANY: Coast to Coast Investments, Inc. dba Carryon; DOCKET NUMBER: 2005-2010-MLM-E; IDENTIFIER: RN102356557; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to equip the UST with a valve or other device designed to automatically shut off the flow of regulated substances; 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases and by failing to provide proper release detection and by failing to test the line leak detector for performance and operational reliability; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §334.7(d)(3), by failing to amend the registration of any changes to reflect the current status of the UST system; and 30 TAC §213.4(k), by failing to comply with the approved Water Pollution Abatement Plan for USTs existing on the Edwards Aquifer Recharge Zone; PENALTY: $7,752; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Comal County; DOCKET NUMBER: 2005-2062-PWS-E; IDENTIFIER: RN101202745; LOCATION: Canyon City, Comal County, Texas; TYPE OF FACILITY: sports park and recreation area with a public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to conduct routine monthly bacteriological monitoring; and 30 TAC §290.122(c)(2)(B), by failing to provide public notification of the failure to conduct routine bacteriological monitoring; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: ConocoPhillips Pipe Line Company; DOCKET NUMBER: 2006-0157-AIR-E; IDENTIFIER: RN100213313; LOCATION: Goldsmith, Ector County, Texas; TYPE OF FACILITY: crude oil storage terminal and pump station; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the annual permit compliance certification in a timely manner; PENALTY: $1,540; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(7) COMPANY: Continental Carbon Company; DOCKET NUMBER: 2006-0039-AIR-E; IDENTIFIER: RN102321577; LOCATION: Sunray, Moore County, Texas; TYPE OF FACILITY: carbon black plant; RULE VIOLATED: 30 TAC §122.145(2)(A) and (C), §122.146(1), and THSC, §382.085(b), by failing to submit the annual permit compliance certification and its associated deviation report; and 30 TAC §116.115(c), Permit Number 9449, and THSC, §382.085(b), by failing to provide documentation of daily visual plant inspections; PENALTY: $4,080; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: Delek Refining, Limited; DOCKET NUMBER: 2006-0028-AIR-E; IDENTIFIER: RN100222512; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.211(a) and THSC, §382.085(b), by failing to report unauthorized emissions resulting from an emissions event; and 30 TAC §116.115(b)(2)(F) and (c), Permit Number 4902, and THSC, §382.085(b), by failing to prevent emissions during a scheduled maintenance; PENALTY: $3,411; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(9) COMPANY: Eagle Railcar Services, L.P.; DOCKET NUMBER: 2005-2059-AIR-E; IDENTIFIER: RN102955150; LOCATION: Elkhart, Anderson County, Texas; TYPE OF FACILITY: railcar maintenance and repair; RULE VIOLATED: 30 TAC §122.146(1), (2), and (4) and THSC, §382.085(b), by failing to submit the annual compliance certification and by failing to comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included in the permit; PENALTY: $7,560; ENFORCEMENT COORDINATOR: Sherronda Martin, (713) 767-3500; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2005-1903-AIR-E; IDENTIFIER: RN100542844; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: industrial organic chemical manufacturing; RULE VIOLATED: 30 TAC §§101.20(3), 111.111(a)(4)(A), and 116.115(c), New Source Review Air Permit Numbers 7799/PSD-TX-860 and 18838/PSD-TX-843, and THSC, §382.085(b), by failing to comply with permitted and visible emissions limits; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit a timely emissions event report; PENALTY: $13,494; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: ExxonMobil Corporation; DOCKET NUMBER: 2005-2066-AIR-E; IDENTIFIER: RN102574803; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 20211, and THSC, §382.085(b), by failing to prevent the unauthorized emissions of isobutylene; PENALTY: $2,820; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: ExxonMobil Corporation; DOCKET NUMBER: 2005-2070-AIR-E; IDENTIFIER: RN102212925; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: chemical plant;

RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 3452, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit initial notification after the discovery of an emissions event; PENALTY: $10,807; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Harris County Water Control and Improvement District Number 70; DOCKET NUMBER: 2006-0142-MWD-E; IDENTIFIER: RN102183654; LOCATION: Crosby, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10530001, and the Code, §26.121(a), by failing to comply with the permit effluent limits for ammonia-nitrogen and by failing to submit a timely annual sludge report; PENALTY: $2,083; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: H.R.N. Inc. dba Collins Food Mart; DOCKET NUMBER: 2006-0059-PST-E; IDENTIFIER: RN101532232; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding USTs; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §334.50(b)(2)(A)(i)(III) and (ii)(I), and the Code, §26.3475(a), by failing to test the line leak detectors and by failing to provide release detection; PENALTY: $5,040; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Kaneka Texas Corporation; DOCKET NUMBER: 2005-1943-AIR-E; IDENTIFIER: RN100218841; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.201(a)(2)(D) and THSC, §382.085(b), by failing to identify the proper process unit or area on the initial and final emissions event notification form; and 30 TAC §116.115(c) and §116.116(a), Air Permit Number 9092, and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere; PENALTY: $7,904; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Kauser Energy, Inc. dba Kaiser Food Mart 3; DOCKET NUMBER: 2005-1958-PST-E; IDENTIFIER: RN102653037; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,968; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: City of Lubbock; DOCKET NUMBER: 2005-2013-MWD-E; IDENTIFIER: RN101609949; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: water reclamation plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10353002, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for five-day biochemical oxygen demand and total suspended solids; PENALTY: $13,140; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(18) COMPANY: McCarty Road Landfill TX, L.P.; DOCKET NUMBER: 2005-1225-MSW-E; IDENTIFIER: RN100213602; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.114(5) and Permit Number 261A, by failing to follow procedures for the detection and prevention of disposal of prohibited waste; and 30 TAC §330.4(b) and Permit Number 261A, by failing to prohibit the disposal of unauthorized oilfield waste; PENALTY: $40,061; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Prater Equipment Company, Inc. dba PEC Materials Reid Pit; DOCKET NUMBER: 2004-0911-WQ-E; IDENTIFIER: RN104285267; LOCATION: Caddo, Stephens County, Texas; TYPE OF FACILITY: surface mining operation; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity; PENALTY: $6,400; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(20) COMPANY: Shawn & Shawn, Inc.; DOCKET NUMBER: 2003-0897-PST-E; IDENTIFIER: RN101799559, Petroleum Storage Tank Facility Identification Number 0044874; LOCATION: Crowley, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Southwest Laminates, Inc.; DOCKET NUMBER: 2005-1915-AIR-E; IDENTIFIER: RN100661750; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: foam lamination plant; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 38517, and THSC, §382.085(b), by failing to comply with the maximum allowable emission rate table for particulate matter, hydrochloric acid, hydrocyanic acid, and volatile organic compound emissions, by failing to conduct testing on acid scrubbers, and by failing to fit scrubbers with continuous monitoring equipment; and 30 TAC §111.111(a)(1)(B) and THSC, §382.085(b), by failing to meet opacity requirements; PENALTY: $15,836; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(22) COMPANY: City of Temple; DOCKET NUMBER: 2006-0117-PWS-E; IDENTIFIER: RN101249308; LOCATION: Temple, Bell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies; 30 TAC §290.42(d)(13), by failing to properly identify all chemical feed lines; and 30 TAC §290.46(t) by failing to post an ownership sign at the membrane surface water treatment plant; PENALTY: $796; ENFORCEMENT COORDINATOR: Amanda King-Zrubek, (512) 239-0824; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: Texas Department of Public Safety; DOCKET NUMBER: 2005-1847-PST-E; IDENTIFIER: RN101045656; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: state law enforcement office; RULE VIOLATED: 30 TAC §334.51(b)(2)(B) and the Code, §26.3475(c)(2), by failing to equip the UST fill tube with a spill container or catchment basin; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(24) COMPANY: Texas Department of Public Safety; DOCKET NUMBER: 2005-1465-PST-E; IDENTIFIER: RN102718848; LOCATION: Texarkana, Bowie County, Texas; TYPE OF FACILITY: state law enforcement office; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(25) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2005-1554-AIR-E; IDENTIFIER: RN100221589; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 19465, and THSC, §382.085(b), by failing to route waste streams from the storage tank to the incinerator which resulted in unauthorized alkyphenol emissions; and 30 TAC §122.143(4) and THSC, §382.085(b), by failing to amend the federal operating permit to include emission point numbers; PENALTY: $42,720; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Trany Inc. dba MS Express 722; DOCKET NUMBER: 2006-0116-PST-E; IDENTIFIER: RN101846384; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,520; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2006-0012-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §117.520(c)(2)(A)(i) and THSC, §382.085(b), by failing to install continuous emissions monitoring systems; PENALTY: $28,440; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: City of Wichita Falls; DOCKET NUMBER: 2006-0027-WQ-E; IDENTIFIER: RN102980687 and RN103049557; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: landfill and transfer station; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay late fees; PENALTY: $1,824; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

TRD-200601992
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: April 4, 2006

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

Deadline: 8 Day Pre-Election Report Due October 31, 2005

Margaret Doescher, Kingwood Area Republican Women's Club, 2638 Pine Cone Dr., Kingwood, Texas 77339

Deadline: December Monthly Report due December 5, 2005

Robert Aguirre, All Children Matter, Texas, P.O. Box 1864, Austin, Texas 78767

Deadline: Semiannual GPAC/SPAC Report Due January 17, 2006

Irismelda R. Benavides, Austin Women's Political Caucus, P.O. Box 1107, Austin, Texas 78767

Anthony E. Bond, Irving Citizens for Truth, 4109 W. Northgate, Suite 824, Irving, Texas 75062

James S. Bowie, Citizens for Term Limitation, P.O. Box 16855, Houston, Texas 77222-6855

Ron F. Branson, Metrocrest Republican Club PAC, P.O. Box 110535, Carrollton, Texas 75011-0535

Stanley J. Briers, Plumbing Air Conditioning Mechanical Contractors Assoc. PAMCA Health & Safety Fund, 219 Whispering Oaks, Taylor Lake Village, Texas 77586

Joanne M. Cade, San Jacinto Republican Women, 5500 Genoa Red Bluff, Pasadena, Texas 77505

Jim R. Davisson, Moving Bedford Forward, P.O. Box 12, Bedford, Texas 76095

Paul J. Gebolys, Woodlands Voter Information Project, 594 Sawdust Rd., Ste. 214, The Woodlands, Texas 77380

Louis T. Gettermann III, The Tony Dale Campaign, 3101 Appennini Way, Cedar Park, Texas 78613

Kathryn C. Hampton, Generation Democrat, 13802 Ridge Farm, San Antonio, Texas 78230

Laura L. Harden, Concerned Citizens of Venus, 501 W. County Road 109, Venus, Texas 76084

Bryan E. Hartmann, Democratic Texas Political Action Committee, 3330 Matlock Rd., Ste. 108, Arlington, Texas 76015

Steven J. Jewell, Bexar County Democratic Party, 3711 Medical Dr. #2711, San Antonio, Texas 78229

Brenda A. Kindt, Dallas BOMA Political Action Committee, 16633 N. Dallas Pkwy., Ste. 200, Addison, Texas 75001

Vince Leibowitz, Van Zandt County Democratic Executive Committee (CEC), P.O. Box 217, Canton, Texas 75103

Grant Martin, Progressive Voters in Action, 2126 Gillette St., Houston, Texas 77006

Charles M. Miles, Black Voter Action Project, 7204 Marywood Cir., Austin, Texas 78723

David E. Morris, Stonewall Democrats of Dallas PAC, 5203 Denton Dr., Dallas, Texas 75235

Sarah J. Phillips, Texas Assn. of Financial & Tax Specialists, 6111 FM 1960 Rd. W., Ste. 104, Houston, Texas 77069

Chris J. Sawyer, Regions Financial Corporation PAC, 417 20th St., North, Birmingham, Alabama 35203

Eric W. Thode, Republican Party of Fort Bend County (CEC), 231 River Grove Rd., Sugar Land, Texas 77478-4749

Susan Jo Tipton, Robertson County Republican Women, Rt. 2 Box 630, Hearne, Texas 77859

Lynda P. Vine, Foundation Appraisers Coalition of Texas PAC, 6106 Vance Jackson Rd. #2, San Antonio, Texas 78230-3373

Brian J. Welkes, Republican Liberty PAC, 7715 Robin Rd., Dallas, Texas 75209

Frank Williams, Jasper County Democratic Co-Ordinated Committee, P.O. Box 399, Buna, Texas 77612

Wanda Williams, Glass, Molders, Potter, Plastics & Allied Workers Local #216, 1507 Gleason Avenue, Cleburne, Texas 76033-6737

Kristi A. Willis, Capital Area Democratic Women PAC, P.O. Box 12962, Austin, Texas 78711-2962

Tom Yturri, Texas Academy of Physician Assistants - PAC, 401 West 15th St., Austin, Texas 78701

Deadline: Semiannual JC/OH Report Due January 17, 2006

Boyd W. Bauer, P.O. Box 1436, Beeville, Texas 78104-1436

Dennis H. Bonnen, 4 Oak Pl., Angleton, Texas 77515-3451

Jack F. Borden Sr., P.O. Box 191913, Dallas, Texas 75219-8509

Scott Cain, P.O. Box 1117, Cleburne, Texas 76033-1117

James A. Cooper, P.O. Box 800052, Houston, Texas 77280-0052

C. Brandon Creighton, 10235 Holly Grove, Conroe, Texas 77304-4960

Darlene Ewing, 9330 Amberton Pkwy. #2200, Dallas, Texas 75243

Michelle A. Fling, 3204 Manchaca Rd. #211, Austin, Texas 78704-5925

Guillermo Gandara Jr., 10736 Thunder, El Paso, Texas 79927

Douglas R. Hensley, 990 Cypress Station Dr. #2211, Houston, Texas 77090-1501

Andrew Butler Hill, 3933 Bunting Ave., Fort Worth, Texas 76107-2610

Ronald M. Kaim, 9150 Chimney Corner Ln., Dallas, Texas 75243-2020

Jose A. Lopez, 1809 Lane St., Laredo, Texas 78043-2622

Thomas Perry Love, P.O. Box 7231, Arlington, Texas 76005-7231

Koecadee Melton Jr., 4001 E. Lancaster Ave., Fort Worth, Texas 76103-3657

Patrick W. Mizell, 3323 Richmond Ave. #C, Houston, Texas 77098-3007

Rick Molina, 1205 W. Jackson Ave., Pasadena, Texas 77506-1708

Robin L. Moore, 3821 Maid Marion Ln., Nacogdoches, Texas 75965-2323

Rick W. Neudorff, 2307 Bengal Ln., Plano, Texas 75023-7703

Jose R. Ochoa, 3111 Homer Dr., Laredo, Texas 78041-1936

Julie Iris Oldham, 4523 Allegheny Dr., San Antonio, Texas 78229-5003

Heriberto Silva, P.O. Box 249, Garciasville, Texas 78547-0249

Eric W. Thode, 231 River Grove Rd., Sugar Land, Texas 77478-4749

Charlie P. Urbina-Jones, 115 N. Cibolo St., San Antonio, Texas 78207-3401

Christopher D. Youngblood, 124 Timberview Ct., Burleson, Texas 76028-3266

Chris M. Zora, P.O. Box 460, Dobbin, Texas 77333-0460

Deadline: 30-Day Pre-Election Report Due February 6, 2006

Cheryl Y. Armitige, P.O. Box 270281, Houston, Texas 77277-0281

Jack F. Borden Sr., P.O. Box 191913, Dallas, Texas 75219

Quention D. Burge Jr., 1030 Lakegrove Loop, Midlothian, Texas 76065

Jason D. Fife, Republican Party of Waller County (CEC), P.O. Box 697, Pattison, Texas 77466

Michael A. Franks, 602 Koehl St., Wharton, Texas 77488

William E. Harrison, 2607 Kimberly Dawn Dr., Conroe, Texas 77304

Star Locke, 4929 Cain Dr., Corpus Christi, Texas 78411-4720

Alfredo Montano Jr., 1101 W. Tyler, Harlingen, Texas 78550

Alena Morris, Kendall County Republican Club, 624 N. Main #4, Boerne, Texas 78006

Jose R. Ochoa, 3111 Homer St., Laredo, Texas 78041

Herschel Smith, 10201 Telephone Rd. #45A, Houston, Texas 77075

Julianne Young, 308 N. Washington, Bryan, Texas 77803

Deadline: February Monthly Report Due February 6, 2006

T. Ray Purser, Texas Friends of Time Warner Cable PAC, 8590 W. Tidwell, Houston, Texas 77040

Deadline: Lobby Activities Report due September 10, 2004

Pamela Parker, P.O. Box 270121, Austin, Texas 78727

Deadline: Lobby Activities Report due November 10, 2004

Jeff David Clark, 1201 Rio Grande St., Ste. 100, Austin, Texas 78701

Deadline: Lobby Activities Report due May 10, 2005

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Deadline: Lobby Activities Report due June 10, 2005

L. Alan Gray, 1108 Lavaca, Ste. 100, Austin, Texas 78701

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Deadline: Lobby Activities Report due July 11, 2005

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Deadline: Lobby Activities Report due August 10, 2005

Anthony Haley, 815 Brazos St., Ste. 200, Austin, Texas 78701

Craig Tounget, 408 West 11th St., Austin, Texas 78701

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Melinda Wheatley, 2110 Westlake Dr., Austin, Texas 78746-2927

Deadline: Lobby Activities Report due September 10, 2005

L. Alan Gray, 1108 Lavaca, Ste. 100, Austin, Texas 78701

Anthony Haley, 815 Brazos St., Ste. 200, Austin, Texas 78701

Robert Sparks, 1108 Lavaca, Ste. 100, Austin, Texas 78701

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Melinda Wheatley, 2110 Westlake Dr., Austin, Texas 78746-2927

Deadline: Lobby Activities Report due October 11, 2005

Anthony Haley, 815 Brazos St., Ste. 200, Austin, Texas 78701

Frank Jackson, 701 Brazos #500, Austin, Texas 78701

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Melinda Wheatley, 2110 Westlake Dr., Austin, Texas 78746-2927

Deadline: Lobby Activities Report due November 10, 2005

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Melinda Wheatley, 2110 Westlake Dr., Austin, Texas 78746-2927

Deadline: Lobby Activities Report due December 12, 2005

J. Mance Bowden, 7601 Rialto Ave. #1513, Austin, Texas 78735

Lucinda Dean Saxon, 1209 Nueces St., Austin, Texas 78701-1719

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Jim Warren, 710 W. 30th St., Austin, Texas 78705-2206

Melinda Wheatley, 2110 Westlake Dr., Austin, Texas 78746-2927

Deadline: Lobby Activities Report due January 10, 2006

M. Diane Allbaugh, P.O. Box 684784, Austin, Texas 78768

Martin Allday, P.O. Box 27564, Houston, Texas 77227-2564

David Bales, 612 Brazos, Ste. 200, Austin, Texas 78701

Pamela Beachley, 906 Rio Grande St., Austin, Texas 78701

Jackson Beaman Floyd, Jr., 500 W. 13th St., Austin, Texas 78701

Robert Burdick, c/o MacKay Shields, LLC, 9 W. 57th St., 33rd Fl, New York, NY 10019

Kent Caperton, 98 San Jacinto Blvd., Ste. 900, Austin, Texas 78701

Weldon Denman, Denman & Co., 815 Brazos, Ste. 603, Austin, Texas 78701-2509

Douglas Dunsavage, American Heart Assn., 1615 Stemmons Freeway, Dallas, Texas 78761

Claudia Flores, Attn: American Heart Assn., 10060 Buffalo Speedway, Houston, Texas 77054

Tol Higginbotham, P.O. Box 1050, Buda, Texas 78610

Jodi Jackson, 106 E. Sixth St., Ste. 900, Austin, Texas 78701

Darryl Johnson, 7404 A. Geneva, Austin, Texas 78723

Joshua Kowert, The Coffey Firm, 4700 Airport Freeway, Fort Worth, Texas 76117

Blanca Laborde, 2100 LaCasa Dr., Austin, Texas 78704

Donald Morgan, c/o MacKay Shields, LLC, 9 W. 57th St., 33rd Fl, New York, NY 10019

Bernard Rothschild, 2600 Twin Oaks, Austin, Texas 78757

Charles Saunders, CITGO Petroleum Corp., P.O. Box 4689, Houston, Texas 77210-4689

Paul Terrill, 810 W. 10th St., Austin, Texas 78701

Rukmini Timmaraju, 3402 Water Locust Dr., Sugar Lane, Texas 77479

Donald Ward, P.O. Box 9128, Austin, Texas 78766-9128

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Melinda Wheatley, 2110 Westlake Dr., Austin, Texas 78746-2927

James White, 2401 Westridge #2616, Houston, Texas 77054

Deadline: Personal Financial Statement due May 2, 2005

Kenneth W. Earl, 1154 Beagle, Rd., Orange, Texas 77632-1822

Cliff Mountain, 2909 Meandering River Ct., Austin, Texas 78746-1955

Lawrence Sampleton, P.O. Box 1868, Austin, Texas 78767-1868

Severita Sanchez, 4823 Patio Lane, Laredo, Texas 78041-3614

TRD-200601931
David Reisman
Executive Director
Texas Ethics Commission
Filed: March 31, 2006

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Nacogdoches	Nacogdoches Cardiac Center PA	L05982	Nacogdoches	00	03/23/06
Throughout Tx	American X-ray & Inspection Services Inc DBA A X I S Inc	L05974	Midland	00	03/15/06

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Alvin	Equistar Chemicals LP	L03363	Alvin	24	03/27/06
Alvin	Innovene USA LLC DBA Innovene	L01422	Alvin	63	03/28/06
Alvin	Equistar Chemicals LP	L03363	Alvin	23	03/20/06
Amarillo	City of Amarillo Water Department	L02222	Amarillo	09	03/27/06
Austin	Columbia/St Davids Healthcare System LP DBA St Davids Medical Center	L00740	Austin	91	03/28/06
Austin	Austin Heart PA	L04623	Austin	35	03/17/06
Austin	Consolidated Technologies Inc	L02045	Austin	23	03/27/06
Austin	Columbia St Davids Healthcare System LP DBA South Austin Hospital	L03273	Austin	62	03/17/06
Austin	Asuragen Inc	L05977	Austin	01	03/16/06
Bay City	Equistar Chemicals LP	L03938	Bay City	19	03/16/06
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	47	03/16/06
Beaumont	ExxonMobile Oil Corporation	L00603	Beaumont	71	03/27/06
Beaumont	E I Dupont De Nemours & Co Inc	L00517	Beaumont	72	3/20/06
Big Spring	Alon USA LP	L04950	Big Spring	08	03/14/06
Cleveland	Garnepudi V Prasad MD DBA Garnepudi V Prasad MD PA	L05629	Cleveland	01	03/14/06
Clifton	CLSW LTD DBA Chemical Lime Company	L02461	Clifton	12	03/22/06
Columbus	Columbus Community Hospital	L03508	Columbus	14	03/22/06
Conroe	CHCA Conroe LP DBA Conroe Regional Medical Center	L01769	Conroe	67	03/31/06
Corpus Christi	Associates in Heart Disease DBA The Heart Clinic of Corpus Christi	L05023	Corpus Christi	12	03/22/06
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	86	03/10/06
Dallas	Medi Physics Inc DBA GE Healthcare	L05529	Dallas	16	03/28/06
Dallas	Texas Scottish Rite Hospital for Crippled Children DBA Texas Scottish Rite Hospital for Children	L05379	Dallas	02	03/22/06
Dallas	Physician Reliance Network DBA Texas Cancer Center at Medical City Dallas	L05534	Dallas	05	03/23/06
Dallas	Renaissance Hospital Dallas Inc	L05900	Dallas	01	03/20/06
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	91	03/22/06
Dallas	Medical Service/Dallas Nephrology Associates DBA Dallas Nephrology Associates	L02604	Dallas	25	03/22/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	North Texas Cardiovascular Associates PA	L05602	Dallas	04	03/16/06
Denton	Metro North Clinic	L05235	Denton	10	03/24/06
Duncanville	Surgery Center of Duncanville LP DBA Surgery Center of Duncanville	L05885	Duncanville	01	03/16/06
El Paso	Southwest Endocrine Consultants	L05617	El Paso	05	03/27/06
El Paso	Southwest Endocrine Consultants	L05617	El Paso	04	03/23/06
El Paso	Texas Oncology PA DBA El Paso Cancer Treatment Center	L05774	El Paso	04	03/14/06
El Paso	Desert Imaging	L05626	El Paso	05	03/13/06
Fort Worth	Physician Reliance LP DBA Texas Oncology at Klabzuba	L05545	Fort Worth	14	03/22/06
Fort Worth	Baylor All Saints Medical Center	L02212	Fort Worth	71	03/15/06
Gruver	Air Products LP	L03181	Gruver	12	03/23/06
Harlingen	Valley Diagnostic Clinic PA	L02933	Harlingen	31	03/21/06
Houston	RAM Testing Inc	L05663	Houston	02	03/27/06
Houston	GB Biosciences Corporation	L03521	Houston	21	03/27/06
Houston	Houston Cyclotron Partners LP DBA Cyclotope	L05585	Houston	07	03/30/06
Houston	Leachman Cardiology Associates	L05229	Houston	06	03/22/06
Houston	Diagnostic Clinic of Houston	L03452	Houston	33	03/27/06
Houston	Chopra Imaging Center Inc DBA Advanced Diagnostics	L05566	Houston	04	03/27/06
Houston	American Diagnostic Tech LLC	L05514	Houston	23	03/14/06
Houston	Texas Southern University	L03121	Houston	22	03/23/06
Houston	Nuclear Imaging Services LLC	L05775	Houston	17	03/13/06
Houston	Advanced Cardiovascular Care Center PA	L05413	Houston	02	03/24/06
Houston	Methodist Health Centers DBA Methodist Willowbrook Hospital	L05472	Houston	21	03/16/06
Houston	Columbia/HCA Healthcare Corp DBA Spring Branch Medical Center	L02473	Houston	54	03/10/06
Houston	Tops Specialty Hospital LTD DBA Tops Surgical Specialty Hospital	L05441	Houston	04	03/13/06
Jasper	Numed Imaging Centers Inc	L05202	Jasper	07	03/13/06
Jourdanton	Jourdanton Hospital Corporation DBA South Texas Regional Medical Center	L04966	Jourdanton	10	03/20/06
Katy	Memorial City Cardiology Associates DBA Katy Cardiology Associates	L05713	Katy	04	03/17/06
La Grange	Austin Heart La Grange	L05516	La Grange	14	03/17/06
Lewisville	Cardiovascular Specialists PA	L05507	Lewisville	06	03/22/06
Longview	Good Shepherd Medical Center	L02411	Longview	75	03/23/06
Lubbock	Covenant Medical Center	L00483	Lubbock	131	03/20/06
Lubbock	University Medical Center	L04719	Lubbock	84	03/2206
Lubbock	University Medical Center	L04719	Lubbock	83	03/14/06
McKinney	Columbia Medical Center of McKinney Subsidiary LP DBA Medical Center of McKinney	L02415	McKinney	33	03/30/06
McKinney	Cardiac Center of Texas PA	L05744	McKinney	08	03/23/06
Marble Falls	Austin Heart PA DBA Austin Heart Clinic Marble Falls	L05505	Marble Falls	13	03/16/06
Marshall	Harrison County Hospital Association DBA Marshall Regional Medical Center	L02572	Marshall	24	03/23/06
Orange	TIN Inc DBA Temple Inland	L01029	Orange	54	03/20/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Orange	Lanxess Corporation	L00976	Orange	53	03/15/06
Paris	Physician Reliance Network Inc DBA Paris Regional Cancer Center	L04664	Paris	12	03/17/06
Plano	Cardiovascular Consultants of North Texas DBA Cardiovascular Consultants Plano	L05690	Plano	01	03/24/06
Plano	Presbyterian Hospital of Plano	L04467	Plano	38	03/23/06
Port Lavaca	Union Carbide Corporation A Subsidiary of the Dow Chemical Company	L00051	Port Lavaca	84	03/20/06
Richmond	Polly Ryon Hospital Authority DBA Oakbend Medical Center	L02406	Richmond	39	03/24/06
Rockdale	TXU Generation Co LP DBA TXU Power	L04075	Rockdale	09	03/23/06
Round Rock	Veterinary Diagnostic Imaging of Texas PA	L05917	Round Rock	01	03/24/06
Round Rock	Austin Heart PA DBA Austin Heart	L05456	Round Rock	15	03/16/06
San Angelo	Hirschfeld Steel Company	L04361	San Angelo	15	03/22/06
San Antonio	Alamo Cement Company LTD	L04951	San Antonio	06	03/27/06
San Antonio	University Physicians Group Nuclear Cardiology	L05410	San Antonio	06	03/22/06
San Antonio	Accord Medical Management LP DBA Nix Health Care System	L03531	San Antonio	26	03/23/06
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	104	03/20/06
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M&S Imaging Centers	L04506	San Antonio	53	03/22/06
San Antonio	William Craig MD PA	L05378	San Antonio	06	03/10/06
San Marcos	Austin Heart PA DBA Austin Heart San Marcos	L05452	San Marcos	18	03/16/06
Seguin	Structural Metals Inc	L02188	Seguin	17	03/16/06
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	03	03/28/06
Sugar Land	US Imaging Inc DBA Fort Bend Imaging	L04459	Sugar Land	28	03/21/06
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	02	03/15/06
Throughout Tx	Team Industrial Service Inc	L00087	Alvin	138	03/24/06
Throughout Tx	Team Industrial Service Inc	L00087	Alvin	137	03/21/06
Throughout Tx	City of Amarillo Department of Engineering	L02320	Amarillo	19	03/27/06
Throughout Tx	Fugro Consultants LP	L03875	Austin	20	03/27/06
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	43	03/28/06
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	42	03/15/06
Throughout Tx	3M Company	L00918	Brownwood	37	03/20/06
Throughout Tx	Spencer J. Buchanan Associates Inc	L01783	Bryan	15	03/27/06
Throughout Tx	Brazos Valley Inspection Services Inc	L02859	Bryan	50	03/28/06
Throughout Tx	Wilson Inspection X-ray Services Inc	L04469	Corpus Christi	53	03/14/06
Throughout Tx	Siemens Medical Solutions USA Inc	L05884	Dallas	03	03/30/06
Throughout Tx	Alpha Testing Inc	L03411	Dallas	16	03/27/06
Throughout Tx	Oilfield Prolog Services Inc DBA Pro-Log	L01828	Denver City	28	03/16/06
Throughout Tx	Professional Services Industries Inc	L02476	El Paso	19	03/30/06
Throughout Tx	Texas Oncology PA	L05606	Fort Worth	09	03/22/06
Throughout Tx	Terra-Mar Inc	L03157	Fort Worth	45	03/22/06
Throughout Tx	Precision Energy Services Inc	L04286	Fort Worth	62	03/21/06
Throughout Tx	Petrochem Inspection Services Inc	L04460	Houston	69	03/30/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Geotech Engineering and Testing	L03923	Houston	16	03/28/06
Throughout Tx	Aitec USA Inc	L05718	Houston	20	03/21/06
Throughout Tx	Texas Genco II LP	L02063	Houston	63	03/16/06
Throughout Tx	RJR Engineering LTD LLP	L05416	Houston	03	03/23/06
Throughout Tx	Remington Support Services Inc	L05642	Houston	06	03/24/06
Throughout Tx	Nuclear Sources & Services Inc DBA NSSI/Sources & Services Inc	L02991	Houston	31	03/22/06
Throughout Tx	IRISNDT Inc	L04769	Houston	25	03/14/06
Throughout Tx	Services and Compliance Consultants Inc	L03873	Huntsville	19	03/22/06
Throughout Tx	Oceaneering International Inc	L04463	Ingleside	41	03/20/06
Throughout Tx	Sam Engineering & Testing LP	L04930	Irving	06	03/13/06
Throughout Tx	Rhodes Testing Inc	L04702	Longview	14	03/27/06
Throughout Tx	Hi-Tech Testing Service Inc	L05021	Longview	57	03/30/06
Throughout Tx	L & G Engineering Laboratory LLC	L05647	Mercedes	04	03/23/06
Throughout Tx	Geoco Inc	L05146	Midland	08	03/16/06
Throughout Tx	Isotech Laboratories Inc	L04283	Midland	17	03/13/06
Throughout Tx	Desert Industrial X-ray LP	L04590	Odessa	48	03/14/06
Throughout Tx	Jones Brothers Dirt & Paving Contractors	L04783	Odessa	08	03/14/06
Throughout Tx	T C Inspections Inc	L05833	Oyster Creek	12	03/24/06
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	03	03/28/06
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	106	03/27/06
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	105	03/21/06
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	104	03/16/06
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	02	03/14/06
Throughout Tx	Coastal Wireline Services Inc DBA Gulf Coast Well Analysis	L04239	Pearland	10	03/21/06
Throughout Tx	Zachry Construction Corporation San Antonio	L05230	San Antonio	13	03/27/06
Throughout Tx	Carrillo & Associates Inc	L05804	San Antonio	03	03/23/06
Throughout Tx	Vulcan Construction Materials LP	L05382	San Antonio	04	03/23/06
Throughout Tx	Burge-Martinez Consulting Inc	L05907	San Antonio	02	03/16/06
Throughout Tx	Carrillo & Associates Inc	L05804	San Antonio	02	03/14/06
Throughout Tx	Drash Consulting Engineers Inc	L04724	San Antonio	17	03/14/06
Throughout Tx	All American Inspection Inc	L01336	San Antonio	55	03/15/06
Throughout Tx	General Electric Company DBA GE Healthcare	L05653	Spring Branch	03	03/06/06
Throughout Tx	Alumax Mill Products Inc	L04663	Texarkana	12	03/28/06
Throughout Tx	CB&I Constructors Inc	L01902	The Woodlands	68	03/23/06
Throughout Tx	Invista Sarl	L00386	Victoria	79	03/21/06
Throughout Tx	American Eagle Well Logging Inc	L04133	Wichita Falls	08	03/21/06
The Woodlands	Lexicon Genetics Incorporated	L04932	The Woodlands	13	03/22/06
Three Rivers	Diamond Shamrock Refining Company LP	L03699	Three Rivers	16	03/15/06
Tomball	Tomball Hospital Authority DBA Tomball Regional Hospital	L02514	Tomball	39	03/24/06
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	61	03/24/06
Tyler	East Texas Medical Center	L00977	Tyler	131	03/17/06
Waco	Hillcrest Baptist Medical Center	L00845	Waco	79	03/27/06
Webster	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05475	Webster	04	03/22/06

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Texas Oncology PA DBA Texas Cancer Center Abilene	L05127	Abilene	10	03/22/06
Carrollton	Tenet Health System Hospitals Dallas Inc	L03765	Carrollton	50	03/22/06
Houston	Angiocardiac Care of Texas PA	L05011	Houston	11	03/15/06
Plainview	Methodist Hospital Plainview DBA Covenant Hospital Plainview	L02493	Plainview	26	03/16/06
Throughout Tx	INTEC	L05150	San Antonio	08	03/14/06

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Bellaire General Hospital DBA Bellaire Medical Center	L02038	Houston	42	2/07/06
Throughout Tx	C3S Inc	L05537	Houston	02	03/14/06
Throughout Tx	Industrial Resolution Imaging Services Inc Scanmasters	L05730	Pearland	04	03/30/06
Throughout Tx	Engineering Consulting Services LTD	L05451	San Antonio	04	03/23/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200602034
Cathy Campbell
General Counsel
Department of State Health Services
Filed: April 5, 2006

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Notice of Agreed Orders

Notice is hereby given that the Department of State Health Services (department) issued an Agreed Order to the following registrants:

Becker-Parkin Dental Supply Company (registration #R19293-001) of Hempstead, NY. A total penalty of $4,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Patricia H. Janki, M.D., (registration #R25967-000) of Houston. A total penalty of $1,000.00 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall comply with additional settlement agreement requirements.

Joseph Novosel, D.P.M., R.S.O., (registration #R13220-000) of Beaumont. A total penalty of $2,000.00 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall comply with additional settlement agreement requirements.

Trace Radiochemicals, Inc. (license #L05435-000) of Denton. A total penalty of $6,000.00 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall comply with additional settlement agreement requirements.

Bill's Dental Equipment, Inc. (registration #18300-000) of Fort Worth. A total penalty of $2,000.00 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall comply with additional settlement agreement requirements.

Medical Center Imaging, Inc. (registration #R26699-000) of Houston. A total penalty of $1,000.00 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall comply with additional settlement agreement requirements.

David W. Murphy (registration #R20851-000) of Georgetown. A total penalty of $1,000.00 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200602033
Cathy Campbell
General Counsel
Department of State Health Services
Filed: April 5, 2006

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Notice of Amendment 39 to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Department of State Health Services (department), Radiation Safety Licensing Branch, that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

Amendment number 39 designates a new radiation safety officer for the license.

The department has determined that the amendment of the license and the terms of conditions provide reasonable assurance that the licensee's radioactive waste processing facility is operated in accordance with the requirements of Texas Administrative Code (TAC), Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as set out in 25 TAC, §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Richard A. Ratliff, P.E., Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Texas Government Code, Chapter 2001), the formal hearing procedures of the department (25 TAC, §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m., Monday - Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200602032
Cathy Campbell
General Counsel
Department of State Health Services
Filed: April 5, 2006

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Notice of Revocation of Certificates of Registration

The Department of State Health Services, having duly filed complaints pursuant to 25 TAC §289.205, has revoked the following certificates of registration: Jeffrey D. Pick, D.C., RPH, PLLC, Cedar Park, R03286, March 21, 2006; Donald Scott Daughtery, D.D.S., Houston, R05586, March 21, 2006; Charles P. McGuire, D.D.S., Houston, R07995, March 21, 2006; Dan O. Waldon, D.C., Pearland, R19434, March 21, 2006; Sanders Chiropractic, Galveston, R19448, March 21, 2006; Ft. Bend Chiropractic and Rehabilitation, Sugar Land, R21704, March 21, 2006; El Paso Occupational Health Clinic, El Paso, R23824, March 21, 2006; Coit Chiropractic and Carpal Tunnel Center, Richardson, R25269, March 21, 2006; American Orthopedic, Dallas, R25578, March 21, 2006; Front Line Technologies, Inc., Pasadena, R26219, March 21, 2006; Lubbock Injury Rehabilitation, Lubbock, R26541, March 21, 2006; Jagruti Bhakta, D.M.D., San Antonio, R27980, March 21, 2006; Valenite, Inc., Gainesville, Z00389, March 21, 2006; Tarrant County Hospital District, Fort Worth, Z00490, March 21, 2006; Las Palmas Medical Center, El Paso, Z00590, March 21, 2006; Terabeam Corporation, Redmond, Washington, Z01540, March 21, 2006.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200602031
Cathy Campbell
General Counsel
Department of State Health Services
Filed: April 5, 2006

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Texas Health and Human Services Commission

Public Notice - Fiscal Year 2008-2009 Legislative Appropriations Request

The Texas Health and Human Services Commission (HHSC) is holding a stakeholder forum to obtain suggestions and/or comments on issues to be included as exceptional items in the Health and Human Service Commission's Fiscal Year 2008-2009 Legislative Appropriations Request (LAR). A preliminary list of suggested exceptional items will be available on the HHSC website no later than April 20, 2006.

The hearing is scheduled for May 1, 2006 from 1:30 - 5:00 p.m. in the Brown-Heatly Public Hearing Room, First Floor, 4900 North Lamar Boulevard, Austin, Texas. Public comment will be taken at this meeting on this preliminary list and any other issues presented by stakeholders.

For additional information, interested parties may contact Cathy Allen, HHSC Financial Services Division, by phone at (512) 424-6629 or by e-mail at cathy.allen@hhsc.state.tx.us. Persons with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Ms. Allen by April 21, 2006, so that appropriate arrangements can be made.

TRD-200602029

Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: April 5, 2006

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Houston-Galveston Area Council

Request for Proposal

The Houston-Galveston Area Council solicits qualified organizations to assist The WorkSource in the creation of Equal Opportunity standards and guidelines for the Gulf Coast Workforce system. A proposal package will be available for download at http://www.theworksource.org/about/rfp.html and http://h-gac.com beginning at 12:00 noon Central Standard Time on Thursday, March 30, 2006. Hard copies of the proposal package will also be available at that time. There will not be a bidders' conference for this procurement. Proposals are due at H-GAC offices on or before 5:00 p.m. Central Standard Time on Thursday, April 13, 2006. Mailed proposals must be postmarked no later than Tuesday, April 11, 2006. H-GAC will not accept late proposals; we will make no exceptions. Prospective bidders may contact Carol Kimmick at (713) 627-3200 or ckimmick@theworksource.org or visit the web site to request a proposal package.

TRD-200601971
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: March 31, 2006

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Texas Department of Insurance

Company Licensing

Application to change the name of BUSINESS MEN'S ASSURANCE COMPANY OF AMERICA to LIBERTY LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Greenville, South Carolina.

Application to change the name of GREAT RIVER INSURANCE COMPANY to INDEMNITY NATIONAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Jackson, Mississippi.

Application to change the name of MID-SOUTH INSURANCE COMPANY to WORLD CORP INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Omaha, Nebraska.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200602025
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 5, 2006

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Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2639 on May 2, 2006, at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the Texas Windstorm Insurance Association's (TWIA) filing of proposed increases to the current maximum limits of liability for commercial and government buildings insured by the TWIA. The TWIA is requesting approval of changes in the liability limits from $1,907,000 to $3,000,000 for commercial buildings and corporeal movable property and from $2,192,000 to $3,000,000 for government buildings and corporeal movable property.

This notice is made pursuant to the Texas Insurance Code Article 21.49 §8D(e) and (g). Article 21.49 §8D(e) authorizes the TWIA board of directors to propose increases in the liability limits, which are additional to the statutorily authorized annual increases for inflation, as the board determines necessary to implement the purposes of Article 21.49. Article 21.49 §8D(g) requires notification and a hearing prior to the Commissioner's approval, disapproval, or modification of the TWIA's proposed adjustments to the liability limits.

A copy of TWIA's petition is available for review in the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. To request a copy of the petition, contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0306-05).

TRD-200602027
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 5, 2006

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Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2640 on May 2, 2006 at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, in Austin, Texas, to consider a petition by the Texas Windstorm Insurance Association (TWIA) requesting approval of (i) reinsurers to provide per risk reinsurance coverage to the TWIA policyholders and (ii) the payment to the TWIA that may be included in the total premium charged TWIA policyholders for per risk reinsured excess coverage, as authorized in the Insurance Code Article 21.49 §8E (added by Acts 1997, 75th Leg., ch. 642, §4). Section 8E authorizes the TWIA to issue a policy of windstorm and hail insurance that includes coverage for an amount in excess of the maximum limit of liability which is approved by the Commissioner pursuant to the Insurance Code Article 21.49 §8D.

Under the Insurance Code Article 21.49 §8E(a), the TWIA must obtain any reinsured excess coverage from reinsurers approved by the Commissioner. The Insurance Code Article 21.49 §8E(b) provides that the premium charged TWIA policyholders for the excess coverage shall be equal to the amount of the reinsurance premium charged to the TWIA by the reinsurers, plus any payment to the TWIA that is approved by the Commissioner.

The hearing is held pursuant to the Insurance Code Article 21.49 §5A which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of the Texas Windstorm Insurance Association Act, Insurance Code Article 21.49.

A copy of TWIA's petition and proposed per risk reinsurance agreement are available for review in the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. To request a copy of the petition and the proposed per risk reinsurance agreement, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0306-04).

TRD-200602028

Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 5, 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 WEYCO, INC., a foreign third party administrator. The home office is OKEMOS, MICHIGAN.

Application for admission to Texas of EBENEFITS INSURANCE AGENCY, LLC, a foreign third party administrator. The home office is LONGMONT, COLORADO.

Application for admission to Texas of DELTA DENTAL OF RHODE ISLAND (using the assumed name of ALTUS BENEFIT ADMINISTRATORS), a foreign third party administrator. The home office is PROVIDENCE, RHODE ISLAND,

Application for incorporation in Texas of ADAIR, MACCLELLEN, ALEXANDRIA AND ASSOCIATES, LLC (using the assumed name of AMA & ASSOCIATES), a domestic third party administrator. The home office is SAN ANTONIO, TEXAS.

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-200602026
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 5, 2006

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Texas Lottery Commission

Instant Game Number 633 "Bonus Cashword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 633 is "BONUS CASHWORD". The play style is "crossword".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 633 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 633.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and blackened square.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol, and each 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. 633 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
■	

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 633 - 1.2E

CODE	PRIZE
THR	$3.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $3.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $100 or $500.

I. High-Tier Prize - A prize of $5,000 or $35,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (633), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 633-0000001-001.

L. Pack - A pack of "BONUS CASHWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the 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 125 will be shown on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS CASHWORD" Instant Game No. 633 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 "BONUS CASHWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 141 (one hundred forty-one) possible play symbols. The player must scratch off all 18 (eighteen) boxed squares in the YOUR LETTERS play area to reveal 18 play symbol letters and the boxed squares in the BONUS play area to reveal 2 play symbol letters; then scratch the corresponding letters found in the BONUS CASHWORD puzzle grid play area. If a player scratches at least three (3) complete "words" in the BONUS CASHWORD puzzle grid play area, the player will win the corresponding prize indicated in the prize legend. For each of the 20 play symbol letters revealed in YOUR LETTERS and BONUS play areas, the player must reveal the identical key play symbol letter in the BONUS CASHWORD puzzle grid play area. Letters combined to form a complete "word" must appear in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the BONUS CASHWORD puzzle grid. Only letters within the BONUS CASHWORD puzzle grid that are matched with the YOUR LETTERS and BONUS LETTERS can be used to form a complete "word". The three (3) small letters outside the squares in the YOUR LETTERS area are for validation purposes and cannot be used to play BONUS CASHWORD. In the BONUS CASHWORD puzzle grid, every lettered square within an unbroken horizontal or vertical sequence must be matched with the YOUR LETTERS or BONUS LETTERS to be considered a complete "word". Words within a word are not eligible for a prize. For example, all the YOUR LETTERS play symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". A complete "word" must contain at least three letters. Letters combined to form a complete "word" must appear in an unbroken vertical (top to bottom) or horizontal (left to right) string of letters in the BONUS CASHWORD. To form a complete word, an unbroken string of letters cannot be interrupted by a block space. Any other words contained within a complete word are not added or counted for purposes of prize legend. Every single letter in the vertical (top to bottom) or horizontal (left to right)‘ unbroken string must: (a) be one of the 18 larger outlined play symbols letters revealed in the play area, YOUR LETTERS or be one of the 2 larger outlined play symbols letters revealed in the play area, BONUS LETTERS and (b) be included to form a complete "word". The possible complete words for this ticket are contained in the BONUS CASHWORD play area. Each possible complete word must consist of three (3) or more letters and occupy an entire word space. Players must match all of the play symbol letters to the identical key play symbols in a possible complete word in order to complete the word. If the letters revealed form three (3) or more complete words each of which occupy a complete word space on the BONUS CASHWORD play area, the player will win the corresponding prize shown in the prize legend for forming that number of complete words. 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. One hundred forty-one (141) possible 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, 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;

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 141 (one hundred forty-one) possible 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 141 (one hundred forty-one) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 141 (one hundred forty-one) possible 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. A ticket will only win as indicated by the prize structure.

B. Consecutive non-winning tickets within a book will not have identical patterns.

C. Adjacent tickets in a pack will not have identical patterns.

D. Each ticket consists of a Your Letters area, Bonus Letters area, and one Bonus Cashword Puzzle Grid.

E. The Bonus Cashword Puzzle Grid will be formatted with at least 1,000 configurations (i.e. puzzle layouts not including words).

F. All Bonus Cashword Puzzle Grid configurations will be formatted within a grid that contains 11 spaces (height) by 11 spaces (width).

G. Each word will appear only once per ticket on the Bonus Cashword Puzzle Grid.

H. Each letter will only appear once per ticket in the YOUR LETTERS play area and BONUS LETTERS play area.

I. Each Bonus Cashword Puzzle Grid will contain the following:

(a) 4 sets of 3 letter words

(b) 5 sets of 4 letter words

(c) 3 sets of 5 letter words

(d) 3 sets of 6 letter words

(e) 1 set of 7 letter words

(f) 2 sets of 8 letter words

(g) 1 set of 9 letter words

J. There will be a minimum of three (3) vowels in the YOUR LETTERS and BONUS LETTERS play areas combined.

K. The length of words found in the Bonus Cashword Puzzle Grid will range from 3 - 9 letters.

L. Only words from the approved word list will appear in the Bonus Cashword Puzzle Grid.

M. None of the prohibited words (see attached list) will appear horizontally (in either direction), vertically, (in either direction) or diagonally (in either direction) in the YOUR LETTERS area (not including the BONUS area). In addition, when all rows of the YOUR LETTERS (not including the BONUS area) are joined together into a single continuous row of letters (first row, followed by second row, etc.), none of the prohibited words will appear in either the forward or reverse direction.

N. You will never find a word horizontally (in either direction), vertically (in either direction), or diagonally (in either direction) in the YOUR LETTERS play area that matches a word in the Bonus Cashword Puzzle Grid.

O. No one (1) letter, with the exception of vowels, will appear more than nine (9) times in the Bonus Cashword Puzzle grid.

P. No ticket will match eleven (11) words or more.

Q. Each ticket may only win one (1) prize.

R. Three (3) to ten (10) completed words will be revealed as per the prize structure.

S. NON-WINNING TICKETS: Sixteen (16) to eighteen (18) YOUR LETTERS will open at least one (1) letter in the Bonus Cashword Puzzle Grid. At least one of the two BONUS letters will open one or more positions on the Cashword Puzzle Grid.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS CASHWORD" Instant Game prize of $3.00, $5.00, $10.00, $20.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BONUS CASHWORD" Instant Game prize of $5,000 or $35,000, 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 "BONUS CASHWORD" 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 of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of 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 "BONUS CASHWORD" 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 "BONUS CASHWORD" 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 therefor, 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 therefor, 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 therefor. 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 20,040,000 tickets in the Instant Game No. 633. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 633 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	3,006,000	6.67
$5	2,525,040	7.94
$10	480,960	41.67
$20	200,400	100.00
$100	42,084	476.19
$500	7,348	2,727.27
$5,000	78	256,923.08
$35,000	27	742,222.22

*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 3.20. 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.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 633 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 633, 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-200601978
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 3, 2006

♦ ♦ ♦

Instant Game Number 699 "Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 699 is "WEEKLY GRAND". The play style for Game 1 is "yours beats theirs"; the play style for Game 2 is "key symbol match"; and the play style for Game 3 is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 699 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 699.

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, $1.00, $2.00, $4.00, $5.00, $10.00, $40.00, $100, $300, MONEY BAG SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, TOP HAT SYMBOL, CLOVER SYMBOL, DIAMOND SYMBOL, and GRAND SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 699 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
GRAND SYMBOL	WEEK
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$40.00	FORTY
$100	ONE HUND
$300	THR HUND
CLOVER SYMBOL	CLVR
DIAMOND SYMBOL	DIAMD
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTGLD
MONEY BAG SYMBOL	MBAG
TOP HAT SYMBOL	TPHAT

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 699 - 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 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00 or $300.

I. High-Tier Prize - A prize of $1,000/wk ($1,000 per week for 20 years).

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (699), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 699-0000001-001.

L. Pack - A pack of "WEEKLY GRAND" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). 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 "WEEKLY GRAND" Instant Game No. 699 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 "WEEKLY GRAND" Instant Game is determined once the latex on the ticket is scratched off to expose 15 (fifteen) play symbols. In Game 1, if the player's YOUR NUMBER beats THEIR NUMBER, in any one row across, the player will win the prize for that row. If the player reveals the GRAND symbol, the player will win $1,000 per week for 20 years. In Game 2, if the player matches 3 identical prize amounts, the player will win that prize. If the player reveals 3 GRAND symbols, the player will win $1,000 per week for 20 years. In Game 3, if the player matches 2 out of 3 play symbols, the player will win $20 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 15 (fifteen) 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 15 (fifteen) 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 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 15 (fifteen) 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 three or more like non-winning prize symbols on a ticket.

C. Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. The GRAND symbol may only be used in Games 1 and 2.

E. Game 1: No ties between Yours and Theirs in a row.

F. Game 1: No duplicate games on a ticket.

G. Game 1: No duplicate non-winning prize symbols on a ticket.

H. Game 2: No 4 or more of a kind.

2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00 or $300 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. When claiming a "WEEKLY GRAND" Instant Game prize of $1,000 per week for 20 years, the claimant must choose one of four (4) payment options for receiving his prize:

1. Weekly via wire transfer to the claimant/winner's account. This will be similar to the current "WEEKLY GRAND" (Game 173) payment process. With this plan, a payment of $1,000.00 less Federal withholding will be made once a week for twenty years. After the initial payment, installment payments will be made every Wednesday.

2. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a pay-

ment of $4,337.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of $4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

3. Quarterly via wire transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

4. Annually via wire transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of $52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

C. As an alternative method of claiming a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, 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 of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WEEKLY GRAND" 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 "WEEKLY GRAND" 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 25,200,000 tickets in the Instant Game No. 699. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 699 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	2,620,800	9.62
$4	2,066,400	12.20
$5	100,800	250.00
$10	352,800	71.43
$20	226,800	111.11
$40	151,200	166.67
$300	8,295	3,037.97
$1,000/WK	3	8,400,000.00

*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 4.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 699 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 699, 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-200601995

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: April 4, 2006

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Instant Game Number 732 "Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 732 is "WEEKLY GRAND". The play style for Game 1 is "yours beats theirs"; the play style for Game 2 is "key symbol match"; and the play style for Game 3 is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 732 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 732.

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, $1.00, $2.00, $4.00, $5.00, $10.00, $40.00, $100, $300, MONEY BAG SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, TOP HAT SYMBOL, CLOVER SYMBOL, DIAMOND SYMBOL, and GRAND SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 732 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
GRAND SYMBOL	WEEK
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$40.00	FORTY
$100	ONE HUND
$300	THR HUND
CLOVER SYMBOL	CLVR
DIAMOND SYMBOL	DIAMD
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTGLD
MONEY BAG SYMBOL	MBAG
TOP HAT SYMBOL	TPHAT

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 732 - 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 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00 or $300.

I. High-Tier Prize - A prize of $1,000/wk ($1,000 per week for 20 years).

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (732), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 732-0000001-001.

L. Pack - A pack of "WEEKLY GRAND" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). 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 "WEEKLY GRAND" Instant Game No. 732 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 "WEEKLY GRAND" Instant Game is determined once the latex on the ticket is scratched off to expose 15 (fifteen) play symbols. In Game 1, if the player's YOUR NUMBER beats THEIR NUMBER in any one row across, the player will win the prize for that row. If the player reveals the GRAND symbol, the player will win $1,000 per week for 20 years. In Game 2, if the player matches 3 identical prize amounts, the player will win that prize. If the player reveals 3 GRAND symbols, the player will win $1,000 per week for 20 years. In Game 3, if the player matches 2 out of 3 play symbols, the player will win $20 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 15 (fifteen) 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 15 (fifteen) 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 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 15 (fifteen) 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 three or more like non-winning prize symbols on a ticket.

C. Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. The GRAND symbol may only be used in Games 1 and 2.

E. Game 1: No ties between Yours and Theirs in a row.

F. Game 1: No duplicate games on a ticket.

G. Game 1: No duplicate non-winning prize symbols on a ticket.

H. Game 2: No 4 or more of a kind.

2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00 or $300 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. When claiming a "WEEKLY GRAND" Instant Game prize of $1,000 per week for 20 years, the claimant must choose one of four (4) payment options for receiving his prize:

1. Weekly via wire transfer to the claimant/winner's account. This will be similar to the current "WEEKLY GRAND" (Game 173) payment process. With this plan, a payment of $1,000.00 less Federal withholding will be made once a week for twenty years. After the initial payment, installment payments will be made every Wednesday.

2. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $4,337.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of $4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

3. Quarterly via wire transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

4. Annually via wire transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of $52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

C. As an alternative method of claiming a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, 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 of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WEEKLY GRAND" 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 "WEEKLY GRAND" 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 25,200,000 tickets in the Instant Game No. 732. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 732 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	2,620,800	9.62
$4	2,066,400	12.20
$5	100,800	250.00
$10	352,800	71.43
$20	226,800	111.11
$40	151,200	166.67
$300	8,295	3,037.97
$1,000/WK	3	8,400,000.00

*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 4.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 732 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 732, 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-200601996
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 4, 2006

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Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §402.102, relating to Bingo Advisory Committee, will be held on Monday, April 24, 2006, at 11:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200601895
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 29, 2006

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Texas Department of Public Safety

Notice of Public Hearing

The Texas Department of Public Safety, in accordance with the Administrative Procedures and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, is holding a public hearing on April 25, 2006, at 9:00 a.m., in the Texas Department of Public Safety, Texas Highway Patrol Division, Conference Room B, 5805 North Lamar, Austin, Texas.

The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rules §§4.1, 4.11 - 4.15, and 4.21 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles. The proposed rules were published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2838).

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Rogers at (512) 424-2116 at least three working days prior to the hearing so that appropriate arrangements can be made.

TRD-200601988
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: April 3, 2006

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Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on March 28, 2006, for an amendment to 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 Marcus Cable Associates, LLC, doing business as Charter Communications, to Amend its State-Issued Certificate of Franchise Authority, Project Number 32561 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32561.

TRD-200601981
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 3, 2006

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Announcement of Application for an Amendment to a State-issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on March 29, 2006, for an amendment to 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 Optical Entertainment Network, Inc. to Amend its State-Issued Certificate of Franchise Authority, Project Number 32565 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32565.

TRD-200601982
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 3, 2006

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Announcement of Application for State-issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on March 28, 2006, 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 Charter Communications VI, LLC, doing business as Charter Communications, for a State-Issued Certificate of Franchise Authority, Project Number 32560 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area footprint includes all or portions of the following municipalities: The Cities of Alma, Azle, Garrett, Port Aransas, Portland, Richland Springs, Sanctuary, and Tolar.

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 32560.

TRD-200601980
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 3, 2006

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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 (commission) of an application on March 27, 2006, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of dPi Teleconnect, LLC for Retail Electric Provider (REP) certification, Docket Number 32547 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes 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 April 21, 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 32547.

TRD-200601979
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 3, 2006

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Notice of Application for Designation as an Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 30, 2006, for designation as an eligible telecommunications provider (ETP) under 47 U.S.C. § 214(e).

Docket Title and Number: Application of XIT Telecommunication and Technology, Ltd. for an Amendment to its Designation as an Eligible Telecommunications Provider (ETP) pursuant to P.U.C. Substantive Rule §26.417. Docket Number 32569.

The Application: The company is requesting ETP designation to add the Vega exchange to its designation.

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 May 4, 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 32569.

TRD-200601984
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 3, 2006

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on March 31, 2006, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (San Felipa Subdivision). Docket Number 32576.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from John W. Drennan requesting BPUB to provide electric utility service to a proposed 20-acre subdivision. The estimated cost to BPUB to provide service to this proposed area is $70,585.69. The area is presently undeveloped. If the application is granted, the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than April 21, 2006, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32576.

TRD-200602002
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 4, 2006

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on March 28, 2006, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Verizon Southwest's (Verizon) request for an additional NXX code to satisfy the business requirements of Peoples Wireless in the Hawkins, Texas area.

Docket Title and Number: Petition of Verizon Southwest for Waiver of Denial of Numbering Resources. Docket Number 32563.

The Application: Verizon requested an additional NXX code to satisfy the business requirements of Peoples Wireless in the Hawkins, Texas area.

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 April 19, 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 32563.

TRD-200601924
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 30, 2006

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on March 29, 2006, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Southwestern Bell Telephone, L.P., doing business as AT&T Texas' (AT&T), request for additional numbering resources on behalf of its customer, Cancer Therapy & Research Center.

Docket Title and Number: Request for Waiver of Denial of Numbering Resources - San Antonio Rate Center. Docket Number 32568.

The Application: AT&T requested a full code of 10,000 consecutive numbers to satisfy its customer's request in the San Antonio Rate Center.

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 April 19, 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 32568.

TRD-200601983
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 3, 2006

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Public Notice of Project to Evaluate Telecommunications Carriers' Reports Pursuant to Senate Bill 408, Section 13, 79th Legislature

Pursuant to Senate Bill (SB) 408, Section 13, 79th Legislature, the Public Utility Commission of Texas (commission) has established a project to review and evaluate telecommunications carriers' reporting requirements with the purpose of creating a report for the Legislature, due on September 30, 2006. This project has been assigned Project Number 32460. The purpose of the commission's review is to evaluate the usefulness of the information collected from telecommunications carriers, determine whether reports contain duplicative information, and ascertain whether any requirements can be changed to make the reporting process more efficient. In addition, the commission will make recommendations regarding the necessity of the reports, determine whether requirements related to reports can be changed for greater efficiency, and provide a plan of action for commission rulemaking activity related to revisions affecting the reports. Furthermore, the commission will provide the Legislature with a recommendation and summary regarding any reporting requirements that will require statutory action.

The commission requests interested parties and affected persons, as that term is defined by Public Utility Regulatory Act §11.003, to file comments to the following questions:

1. If comments are filed on behalf of an entity subject to the PUC's regulatory jurisdiction, please indicate your company's regulatory status (*i.e.*, PURA §52, §58, §59, or §65).

2. If applicable, please provide a table that lists all reports required by statute or commission rule that your company currently files with the commission. Include the following information:

a. name of report;

b. project number under which it is filed (if applicable);

c. filing occurrence (*i.e.*, annual, quarterly, etc.) and due dates; and

d. statutory or rule obligation under which the report is filed.

3. Please provide a list of any reports or portions of reports required by statute or commission rule that you believe to be duplicative of information included in a different report and include the following information:

a. specific description of the information that is duplicative and an explanation of why you believe it is; and

b. your recommendation for elimination, consolidation, or streamlining that will correct the duplication of information.

4. Please provide a list of any reports required by statute or commission rule that you believe should be eliminated and include the following information:

a. An explanation of why the report should be eliminated; and

b. your recommendation regarding the appropriate action to eliminate the reporting requirement (*i.e.*, commission rulemaking, legislative action, or consolidation with another report, etc.

5. Please identify which reports that are currently required by statute or commission rule that are necessary to the industry's or the commission's activities and include the following information:

a. an explanation of why the report is necessary; and

b. your discussion of any negative ramifications that would occur if the report is eliminated or altered from its current format.

6. Should reporting requirements for a transitioning PURA §65 company be different than those for PURA §52, §58, and §59 companies? Please provide your reasoning and recommendations of which reports should apply to these categories.

Responses may be filed by submitting 16 copies to the commission's filing clerk, Public Utility Commission of Texas, 1701 North Congress

Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 20 calendar days of the publication of this notice. All responses should reference Project Number 32460. The commission requests comments be limited to 25 pages, exclusive of attachments. Reply comments may be filed within 25 calendar days of the notice of this publication. The commission requests that reply comments be limited to 10 pages, exclusive of attachments.

A workshop will be held on Tuesday, May 16, 2006, at 9:30 a.m. in the Commissioners' Hearing Room located on the seventh floor of the William B. Travis State Office Building, 1701 Congress Avenue, Austin, Texas 78701.

Questions concerning this notice should be referred to Janis Ervin, Senior Policy Specialist, Infrastructure Reliability Division, at (512) 936-7372. Hearing and speech-impaired individuals with text telephones may contact the commission at (512) 936-7136.

TRD-200602004
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 4, 2006

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Public Notice of Workshop on Senate Bill 5 - Section 30

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding the study to determine whether Title 2, Utilities Code, of the Public Utilities Regulatory Act (PURA) adequately preserves customer choice in Internet-enabled applications employed in association with broadband services. The workshop is scheduled on Tuesday, June 13, 2006, at 10:00 a.m. in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. This matter has been assigned Project Number 32527, and styled *Pursuant to Senate Bill 5 - Study to Determine Whether Title 2, Utilities Code Adequately Preserves Customer Choice in the Internet Enabled Applications Associated with Broadband Service (Network Neutrality)*. This project originated pursuant to Senate Bill (SB) 5, 79th Legislature - 2nd Called Session.

The relevant section of SB 5 states:

"**SECTION 30** - The Public Utility Commission of Texas shall conduct a study to determine whether Title 2, Utilities Code, adequately preserves customer choice in the Internet-enabled applications employed in association with broadband service and shall report its conclusions and recommendations to the legislature not later than January 1, 2007. The study must include consultation with and comment from all interested parties."

Prior to the workshop, the commission requests all interested persons to file comments concerning the following:

1. Please identify any provisions in the current Title 2, Utilities Code, which you believe address the preservation of customer choice in Internet-enabled applications employed in association with broadband service.

(a) If you cite any provisions that you believe address this issue, please state if you believe they adequately preserve customer choice and what makes such provisions adequate preservation of customer choice.

(b) If you do not believe any such provisions exist, please state what provisions (if any) you believe should be added and why they should be added. Please also explain how and why any such added provisions will adequately preserve customer choice.

2. Does the term "customer choice" as used in SB 5, Section 30, apply to **end user** customers exclusively or does it also apply to **wholesale** customer choice? Please provide an explanation as to the basis for reasoning that customer choice applies to end users only, or both end users and wholesale customers.

3. Does Title 2, Utilities Code, define or describe "customer choice"? If yes, please cite where. If not, how should the question of what is adequate customer choice be determined?

4. The United States Senate (U. S. Senate) Commerce, Science, and Transportation Committee Hearing on February 7, 2006, included the following "network neutrality" topics:

(a) end-user access to and use of the internet;

(b) content provider access to and use of the internet;

(c) broad-band carrier control over the internet;

(d) competition among network providers;

(e) funding of broadband deployment;

(f) open and interconnected nature of the internet;

Please identify and discuss which issues listed in (a) - (f) above you believe are relevant to, and are **substantially the same** as those properly addressed by this study and why. For any of the issues listed above as discussed at the U. S. Senate Committee Hearing, please identify and discuss which issues you believe are **substantially different** from the topics of this study, and why or how they differ.

5. What interactions exist between Federal jurisdiction on this topic and the authority of states to pass laws regarding the issue?

6. Please identify any additional customer choice or "network neutrality" issues the commission should consider and explain why these issues should be included in this study and report.

Responses should be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 30 days of the date of publication of this notice. Reply comments should be filed under the same guidelines as initial responses and should be filed within 45 days of the date of publication of this notice. All responses should reference Project Number 32527. The commission requests comments and reply comments be limited to 25 pages.

By Thursday, June 8, 2006, the commission shall make available in Central Records under Project Number 32527 an agenda for the format of the workshop.

The commission requests that persons planning on attending the workshop register by phone with Isabel Herrera, Communications Oversight Division, at (512) 936-7205.

Questions concerning the workshop or this notice should be referred to Larry D. Barnes, Communications Industry Oversight Division, at (512) 936-7336. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200602007
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 4, 2006

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Stephen F. Austin State University

Notice of Outside Counsel Contract Availability

Stephen F. Austin State University invites proposals from patent attorneys interested in entering into a contract for outside counsel services with Stephen F. Austin State University (SFASU or University).

The University requires a specialized patent attorney with experience in biochemical/pharmaceutical patent filings and related processes to handle a patent filing on behalf of the University, both in the U. S. and potentially worldwide. The attorney must be registered to practice before the U. S. Patent and Trademark Office. It is preferred that the attorney have prior experience in working with institutions of higher education in the state of Texas in the patent process. The outside counsel services desired are a continuation of a service previously performed by outside counsel. Attorney David Henry has filed the initial patent application under a previous contract. The contract will be awarded to the previous outside counsel unless a better offer is received. The term of the contract is to be for a period of twenty-four (24) months from the date of award, or until the patent is issued, with options to renew for future filings related to this patent. The estimated amount of the contract exceeds $20,000.00, which is the required threshold for posting under the outside counsel procedures stipulated by the Office of the Attorney General. Commencement of services is expected to be as soon as possible.

Prospective outside counsel must be prepared to provide any evidence of experience and performance ability which SFASU deems necessary to accomplish the task of filing this specialized patent. Outside counsel will be required to sign the outside counsel contract formulated by the Office of the Attorney General.

Interested parties are invited to contact the Office of the General Counsel for SFASU prior to April 15, 2006 to express their interest and describe their capabilities. Further information may be obtained from Yvette Clark, General Counsel, at (936) 468-4305, or by mail at Office of the General Counsel, Stephen F. Austin State University, P.O. Box 13065, SFA, Nacogdoches, Texas 75962-3065.

TRD-200601923
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: March 30, 2006

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Porter Special Utility District, 22162 Water Well Road, Porter, Texas 77365-5380, received March 1, 2006, application for financial assistance in the amount of $1,260,000 from the Texas Water Development Funds.

Ricardo Water Supply Corporation, P.O. Box 1572, Kingsville, Texas 78364, received February 14, 2006, application for financial assistance in the amount of $2,240,000 from the Drinking Water State Revolving Fund.

County of Zapata, P.O. Box 99, Zapata, Texas 78076, received February 15, 2006, application for financial assistance in the amount of $14,826,000 from the Drinking Water State Revolving Fund - Disadvantaged Communities Program.

Little Elm Valley Water Supply Corporation, 462 West FM 485, Cameron, Texas 76520, received March 6, 2006, application for financial assistance in the amount of $410,000 from the Rural Water Assistance Fund.

City of Flatonia, 125 East, South Main Street, P.O. Box 329, Flatonia, Texas 78941, received February 15, 2006, application for financial assistance in the amount of $660,000 from the Drinking Water State Revolving Fund - Disadvantaged Communities Program.

Walnut Creek Special Utility District, P.O. Box 657, 1155 Highway 199 West, Springtown, Texas 76082, received February 28, 2006, application for financial assistance in the amount of $2,800,000 from the Texas Water Development Funds.

R. W. Beck, Inc., 1300 East Lookout Drive, Richardson, Texas 75082, received March 15, 2006, application for financial assistance from the Research and Planning Fund.

Texas A&M University - Agriculture Experiment Station, Mail Stop 2147, College Station, Texas 77843-2147, received March 16, 2006, application for financial assistance from the Research and Planning Fund.

Resource Economics, Inc., 701 Brazos, Suite 500, Austin, Texas 78701, received March 16, 2006, application for financial assistance from the Research and Planning Fund.

Todd H. Votteler, PH.D. and Joni S. Charles, Ph.D., 10604 Natick Lane, Austin, Texas 78739, received March 16, 2006, application for financial assistance from the Research and Planning Fund.

Espey Consultants, Inc., 3809 South Second Street, Suite B-300, Austin, Texas 78704, received March 16, 2006, application (Reservoir Site Acquisition) for financial assistance from the Research and Planning Fund.

Halff Associates, Inc., 1421 Wells Branch Parkway, Suite 104, Austin, Texas 78660-3230, received March 16, 2006, application (Reservoir Site Acquisition) for financial assistance from the Research and Planning Fund.

HDR, 4401 West Gate Blvd., Suite 400, Austin, Texas 78745, received March 16, 2006, application (Reservoir Site Acquisition) for financial assistance from the Research and Planning Fund.

R. W. Beck, Inc., 1300 East Lookout Drive, Richardson, Texas 75082, received March 15, 2006, application (Reservoir Site Acquisition) for financial assistance from the Research and Planning Fund.

Texas A&M University - Agriculture Experiment Station, Mail Stop 2147, College Station, Texas 77843-2147, received March 16, 2006, application (Reservoir Site Acquisition) for financial assistance from the Research and Planning Fund.

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Todd H. Votteler, PH.D. and Joni S. Charles, Ph.D., 10604 Natick Lane, Austin, Texas 78739, received March 16, 2006, application (Reservoir Site Acquisition) for financial assistance from the Research and Planning Fund.

TRD-200602035
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Filed: April 5, 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).