

---

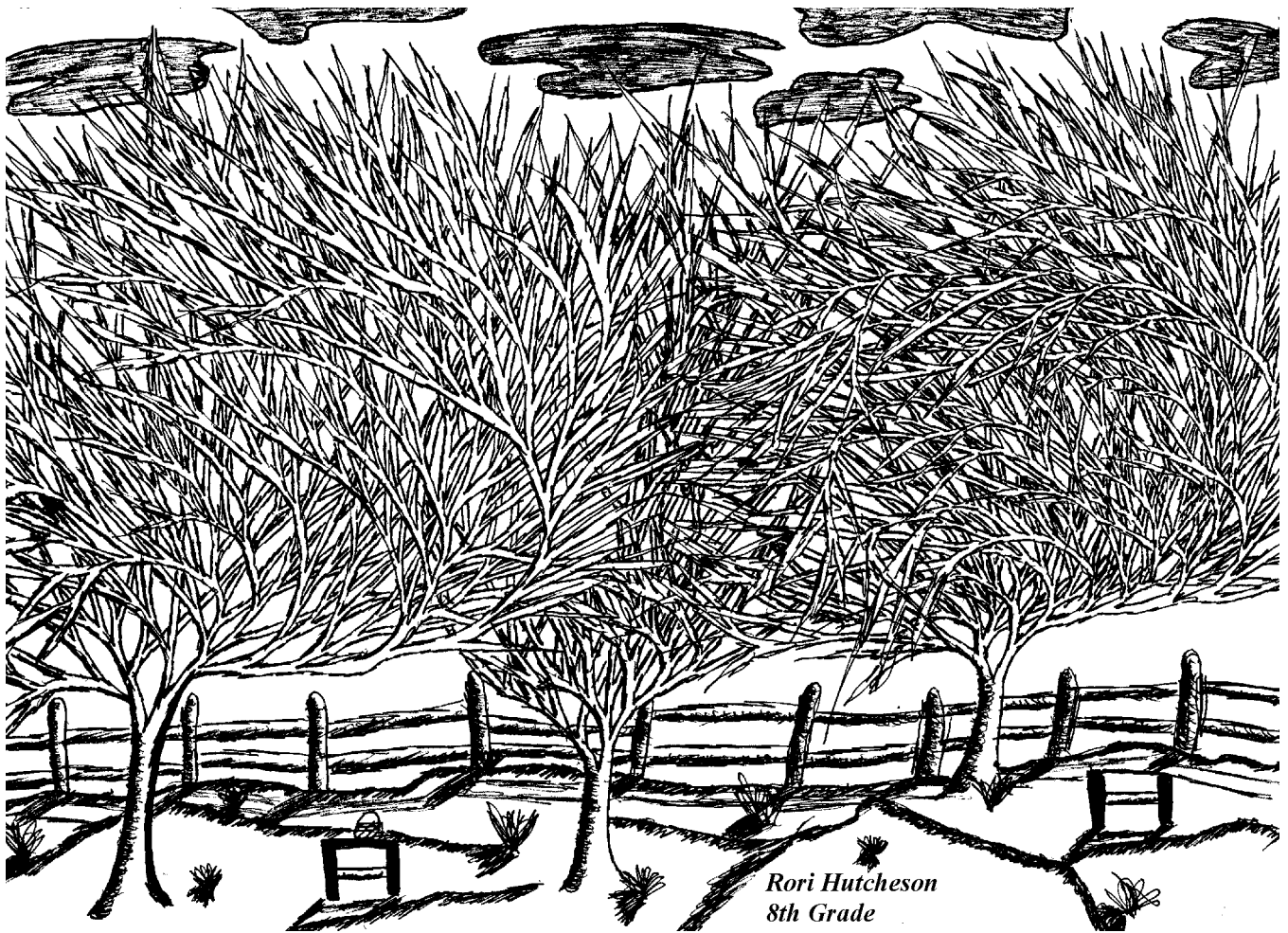
# TEXAS REGISTER

*Volume 29 Number 41*

*October 8, 2004*

*Pages 9469-9604*

---



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

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

*Texas Register*, (ISSN 0362-4781), is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year \$200. First Class mail subscriptions are available at a cost of \$300 per year. Single copies of most issues for the current year are available at \$10 per copy in printed format.

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

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

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

# TEXAS REGISTER

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

**Secretary of State –**  
Geoffrey S. Connor  
**Director -** Dan Procter

**Staff**  
Ada Aulet  
Leti Benavides  
Dana Blanton  
Carla Carter  
LaKiza Fowler-Sibley  
Kris Hogan  
Roberta Knight  
Jill S. Ledbetter  
Diana Muniz

# IN THIS ISSUE

## **GOVERNOR**

Appointments .....	9475
Budget Execution Order .....	9475

## **ATTORNEY GENERAL**

Request for Opinions .....	9477
Opinions .....	9477

## **PROPOSED RULES**

### **TEXAS STATE LIBRARY AND ARCHIVES COMMISSION**

#### LIBRARY DEVELOPMENT

13 TAC §§1.74, 1.81, 1.83 .....	9481
13 TAC §1.83 .....	9483

#### STATE RECORDS

13 TAC §§6.2 - 6.7, 6.9, 6.10 .....	9484
-------------------------------------	------

### **RAILROAD COMMISSION OF TEXAS**

#### RAIL SAFETY RULES

16 TAC §5.301 .....	9485
---------------------	------

#### ADMINISTRATION

16 TAC §20.5 .....	9490
16 TAC §§20.101, 20.103 - 20.105, 20.110, 20.111, 20.114, 20.115, 20.120 .....	9491
16 TAC §20.101 .....	9492

### **TEXAS FUNERAL SERVICE COMMISSION**

#### CEMETERIES AND CREMATORIES

22 TAC §205.6 .....	9492
---------------------	------

#### ETHICAL STANDARDS FOR PERSONS LICENSED BY THE COMMISSION

22 TAC §209.1 .....	9493
---------------------	------

### **TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

#### CONTINUING PROFESSIONAL EDUCATION

22 TAC §523.130 .....	9494
22 TAC §523.144 .....	9495
22 TAC §523.144 .....	9496

### **TEXAS WATER DEVELOPMENT BOARD**

#### REGIONAL WATER PLANNING GUIDELINES

31 TAC §357.5, §357.7 .....	9497
-----------------------------	------

#### STATE WATER PLANNING GUIDELINES

31 TAC §358.2, §358.3 .....	9500
31 TAC §358.5, §358.6 .....	9501
31 TAC §358.6 .....	9502

## FINANCIAL ASSISTANCE PROGRAMS

31 TAC §363.2 .....	9503
31 TAC §363.15 .....	9504

## DRINKING WATER STATE REVOLVING FUND

31 TAC §371.37 .....	9505
----------------------	------

## CLEAN WATER STATE REVOLVING FUND

31 TAC §375.37 .....	9507
----------------------	------

### **TEXAS YOUTH COMMISSION**

#### ADMISSION AND PLACEMENT

37 TAC §85.35 .....	9508
37 TAC §85.35 .....	9509
37 TAC §85.45 .....	9510

#### SECURITY AND CONTROL

37 TAC §97.9 .....	9511
37 TAC §97.9 .....	9511
37 TAC §97.10 .....	9513
37 TAC §97.13 .....	9515

### **TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

#### GENERAL PROVISIONS

37 TAC §151.53 .....	9516
----------------------	------

#### SPECIAL PROGRAMS

37 TAC §159.3 .....	9517
---------------------	------

## **WITHDRAWN RULES**

### **TEXAS FUNERAL SERVICE COMMISSION**

#### ETHICAL STANDARDS FOR PERSONS LICENSED BY THE COMMISSION

22 TAC §209.1 .....	9519
---------------------	------

### **TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

#### CONTINUING PROFESSIONAL EDUCATION

22 TAC §523.144 .....	9519
22 TAC §523.144 .....	9519

## **ADOPTED RULES**

### **COMMISSION ON STATE EMERGENCY COMMUNICATIONS**

#### REGIONAL PLANS--STANDARDS

1 TAC §251.10 .....	9521
---------------------	------

### **TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

#### MEDICAID HEALTH SERVICES

1 TAC §354.1341 .....	9524
-----------------------	------

REIMBURSEMENT RATES	
1 TAC §355.8301 .....	9525
<b>TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST</b>	
COMMERCIAL FEED RULES	
4 TAC §61.91 .....	9527
COMMERCIAL FERTILIZER RULES	
4 TAC §65.51 .....	9527
4 TAC §65.91 .....	9528
<b>OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION</b>	
REVENUE BONDS FOR DEVELOPMENT OF EMPLOYMENT--INDUSTRIAL AND HEALTH RESOURCES	
10 TAC §§170.1 - 170.6 .....	9528
10 TAC §§170.21 - 170.25 .....	9528
10 TAC §§170.31 - 170.35 .....	9529
TEXAS RURAL ECONOMIC DEVELOPMENT PROGRAM	
10 TAC §§172.1 - 172.10 .....	9529
RULES FOR TEXAS SMALL BUSINESS INDUSTRIAL DEVELOPMENT CORPORATION REVENUE BOND PROGRAMS	
10 TAC §§185.1 - 185.7 .....	9529
PROCEDURES OF THE BOARD	
10 TAC §§190.1 - 190.7 .....	9530
MEMORANDA OF UNDERSTANDING	
10 TAC §§195.1 - 195.12 .....	9530
ADVISORY COMMITTEES	
10 TAC §§196.1 - 196.8 .....	9530
ADMINISTRATION	
10 TAC §200.1, §200.11 .....	9531
<b>TEXAS STATE LIBRARY AND ARCHIVES COMMISSION</b>	
LIBRARY DEVELOPMENT	
13 TAC §1.48 .....	9531
13 TAC §1.63 .....	9532
STATE PUBLICATIONS DEPOSITORY PROGRAM	
13 TAC §3.1, §3.17 .....	9533
<b>RAILROAD COMMISSION OF TEXAS</b>	
OIL AND GAS DIVISION	
16 TAC §3.80 .....	9533

<b>TEXAS FUNERAL SERVICE COMMISSION</b>	
REGISTRATION AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES	
22 TAC §§205.1 - 205.3 .....	9535
CEMETERIES AND CREMATORIES	
22 TAC §§205.1, 205.3, 205.5, 205.7, 205.9, 205.11, 205.13, 205.15 .....	9536
<b>TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY</b>	
RULEMAKING PROCEDURES	
22 TAC §509.6 .....	9537
CERTIFICATION AS A CPA	
22 TAC §511.89, §511.90 .....	9537
FEE SCHEDULE	
22 TAC §521.10 .....	9537
CONTINUING PROFESSIONAL EDUCATION	
22 TAC §523.112 .....	9538
22 TAC §§523.145 - 523.147 .....	9538
22 TAC §§523.145 - 523.147 .....	9538
BOARD OPINIONS	
22 TAC §526.1, §526.3 .....	9539
PEER REVIEW	
22 TAC §§527.1 - 527.11 .....	9540
<b>TEXAS PARKS AND WILDLIFE DEPARTMENT</b>	
FINANCE	
31 TAC §53.2 .....	9540
31 TAC §53.15 .....	9543
WILDLIFE	
31 TAC §65.102 .....	9543
31 TAC §65.901 .....	9545
RESOURCE PROTECTION	
31 TAC §69.22, §69.30 .....	9548
<b>TEXAS STATE SOIL AND WATER CONSERVATION BOARD</b>	
REMOVAL OF A DISTRICT DIRECTOR	
31 TAC §§527.1 - 527.7 .....	9549
<b>COMPTROLLER OF PUBLIC ACCOUNTS</b>	
TAX ADMINISTRATION	
34 TAC §3.3 .....	9550
34 TAC §3.21 .....	9550
34 TAC §3.285 .....	9550

34 TAC §3.299	9551
34 TAC §3.300	9551
34 TAC §3.318	9551
34 TAC §3.431	9552
34 TAC §3.433	9552
34 TAC §3.435	9552
34 TAC §3.436	9553
34 TAC §3.439	9553
34 TAC §3.440	9554
34 TAC §3.447	9554
34 TAC §3.692	9555
34 TAC §3.711	9555
34 TAC §3.731	9556
34 TAC §3.732	9556
<b>FUNDS MANAGEMENT (FISCAL AFFAIRS)</b>	
34 TAC §5.36	9557
34 TAC §5.56	9557
34 TAC §5.160	9558
<b>TEXAS DEPARTMENT OF CRIMINAL JUSTICE</b>	
<b>CORRECTIONAL INSTITUTIONS DIVISION</b>	
37 TAC §152.16	9558
<b>RULE REVIEW</b>	
<b>Agency Rule Review Plan--Revised</b>	
State Pension Review Board	9561
<b>Proposed Rule Reviews</b>	
Texas State Library and Archives Commission	9561
Texas Workforce Commission	9561
<b>Adopted Rule Review</b>	
Texas State Board of Public Accountancy	9562
<b>TABLES AND GRAPHICS</b>	
	9563
<b>IN ADDITION</b>	
<b>Department of Aging and Disability Services</b>	
Open Solicitation for Bandera County	9569
<b>Coastal Coordination Council</b>	
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program	9569
<b>Office of Consumer Credit Commissioner</b>	
Notice of Rate Ceilings	9571

<b>Texas Commission on Environmental Quality</b>	
Enforcement Orders	9571
Notice of District Petition	9574
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions	9574
Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions	9575
Notice of Opportunity to Comment on the Draft 2004 Texas Emissions Reduction Plan Biennial Report to the Texas Legislature	9578
Notice of Water Rights Application	9578
Notice of Water Rights Application	9580
Proposal for Decision	9581
Proposed Enforcement Orders	9581
<b>Texas Ethics Commission</b>	
List of Late Filers	9585
<b>Department of State Health Services</b>	
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Apple Chiropractic Clinic, Inc.	9587
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Benson Chiropractic, Inc.	9587
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Eastex Veterinary Clinic, P.A.	9587
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Fairmont Diagnostic Center and Open MRI, Inc.	9587
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Schlumberger Technology Corporation	9588
<b>Texas Health and Human Services Commission</b>	
Notice of Public Hearing	9588
<b>Texas Department of Insurance</b>	
Company Licensing	9588
Third Party Administrator Applications	9588
<b>Texas Lottery Commission</b>	
Instant Game Number 511 "Pure Gold"	9589
<b>Public Utility Commission of Texas</b>	
Notice of Application for Waiver of Denial of Request for NXX Code	9593
Notice of Petition for Waiver of Denial of Request for NXX Code 9594	
<b>Railroad Commission of Texas</b>	
Revised Forms Adopted with Amendments to 16 TAC §3.80	9594
<b>Texas Department of Transportation</b>	
Request for Proposal--Outside Counsel	9601
<b>Texas Workers' Compensation Commission</b>	

Invitation to Apply to the Medical Advisory Committee (MAC)..9601

# Open Meetings

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

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

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

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

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



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

# THE 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 September 14, 2004

Appointed as Chief Justice of the Supreme Court of Texas for a term until the next General Election and until his successor shall be duly elected and qualified, Justice Wallace B. Jefferson, of Austin. Justice Jefferson is replacing Chief Justice R. Phillips who resigned, effective September 3, 2004.

### Appointments for September 17, 2004

Appointed to the University of Houston System Board of Regents for a term to expire August 31, 2009, Calvin W. Stephens of Dallas (replacing Theresa Chang of Houston whose term expired).

Rick Perry, Governor

TRD-200405903



## Budget Execution Order

### Legislative Budget Board Budget Execution Proposal

Pursuant to Texas Government Code 317.002 this budget execution order is hereby proposed for the following actions affecting items of appropriation made in House Bill 1, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 as amended by House Bill 2, Section 3.02, Acts of the 78th Legislature, Third Called Session and House Bill 28, Article V, Acts of the 78th Legislature, Third Called Session:

### Texas School for the Blind and Visually Impaired

1. We find that the insufficient funds for classroom instruction and related and support services at the Texas School for the Blind and Visually Impaired creates an emergency. We therefore propose that:

a. \$457,660 in general revenue appropriations made in House Bill 1, Section 11.28(c), Article IX, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003, as added by House Bill 28, Article V, Acts of the 78th Legislature, Third Called Session, be transferred to the Texas School for the Blind and Visually Impaired for the fiscal biennium ending August 31, 2005 for Strategies A.1.1. Classroom Instruction, A.1.4. Related and Support Services, and C.1.1. Indirect Administration to meet this emergency; and

b. the Texas School for the Blind and Visually Impaired be authorized to expend during the fiscal year ending August 31, 2004, in addition to amounts appropriated in House Bill 1, Chapter 1330, Acts of the 78th Legislature, Regular Session, an amount not to exceed \$231,000 out of appropriations made for the fiscal year ending August 31, 2005 in Strategies A.1.1. Classroom Instruction, A.1.4. Related and Support Services, and C.1.1. Indirect Administration to meet this emergency.

### Health-related Institutions - Targeted Appropriation Levels

2. We further find that a lack of sufficient funding at health-related institutions creates an emergency. We therefore propose that the following amounts be transferred from general revenue appropriations made

in House Bill 2, Section 3.02, Acts of the 78th Legislature, Third Called Session:

a. \$4,503,301 to The University of Texas Southwestern Medical Center at Dallas for the fiscal biennium ending August 31, 2005 for operating costs to meet this emergency;

b. \$13,220,618 to The University of Texas Medical Branch at Galveston for the fiscal biennium ending August 31, 2005 for operating costs to meet this emergency;

c. \$6,252,893 to The University of Texas Health Science Center at Houston for the fiscal biennium ending August 31, 2005 for operating costs to meet this emergency;

d. \$7,241,724 to The University of Texas Health Science Center at San Antonio for the fiscal biennium ending August 31, 2005 for operating costs to meet this emergency;

e. \$5,644,983 to The University of Texas M.D. Anderson Cancer Center for the fiscal biennium ending August 31, 2005 for operating costs to meet this emergency;

f. \$1,582,183 to The University of Texas Health Center at Tyler for the fiscal biennium ending August 31, 2005 for operating costs to meet this emergency;

g. \$2,704,645 to Texas A&M University System Health Science Center for the fiscal biennium ending August 31, 2005 for operating costs to meet this emergency;

h. \$1,975,326 to the University of North Texas Health Science Center at Fort Worth for the fiscal biennium ending August 31, 2005 for operating costs to meet this emergency;

i. \$5,758,716 to Texas Tech University Health Sciences Center for the fiscal biennium ending August 31, 2005 for operating costs to meet this emergency; and

j. \$2,342,809 to the Texas Higher Education Coordinating Board for the fiscal biennium ending August 31, 2005 for the purposes of strategy D.1.1. Baylor College of Medicine and Rider 7, page III-54, House Bill 1, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003, to meet this emergency.

### Texas Excellence Fund and University Research Fund

3. We find that a lack of sufficient funding for institutional excellence and the support of research creates an emergency. We therefore propose that \$11,633,294 from general revenue appropriations made in House Bill 1, Section 11.28(c), Article IX, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003, as added by House Bill 28, Article V, Acts of the 78th Legislature, Third Called Session, be transferred to the Texas Excellence Fund, for the purpose of allocations to eligible general academic institutions according to Section 62.055, Education Code, for the fiscal biennium ending August 31, 2005.

4. We find that a lack of sufficient funding for institutional excellence and the support of research creates an emergency. We therefore propose that \$11,633,294 from general revenue appropriations made in House Bill 1, Section 11.28(c), Article IX, Chapter 1330, Acts of the 78th



Legislature, Regular Session, 2003, as added by House Bill 28, Article V, Acts of the 78th Legislature, Third Called Session, be transferred to the University Research Fund for the purpose of allocations to eligible general academic institutions according to Section 62.075, Education Code, for the fiscal biennium ending August 31, 2005.

If approved by the Governor, this budget execution order expires on August 31, 2005.

Signed by David Dewhurst

Lieutenant Governor

Joint Chair, Legislative Budget Board

Signed by Tom Craddick

Speaker of the House

Joint Chair, Legislative Budget Board

I certify that this Budget Execution Proposal was adopted by the Legislative Budget Board on August 23, 2004, by the following vote:

On the part of the Senate:

YEAS: 5; NAYS: 0

On the part of the House:

YEAS: 5; NAYS: 0

Signed by John O'Brien

Deputy Director

Legislative Budget Board

Approved:

Signed by Rick Perry

Date: 9/21/04

Rick Perry

Governor of Texas

TRD-200405893

Royce Pabst Poinsett

Governor's Counsel for Budget, Planning and Policy

Office of the Governor

Filed: September 24, 2004

◆ ◆ ◆

# 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-0270-GA**

**Requestor:**

The Honorable Terry D. McEachern  
District Attorney  
Hale and Swisher Counties  
Hale County Courthouse  
500 Broadway, Number 300  
Plainview, Texas 79072

Re: Authority of a commissioners court to require a district attorney to relinquish a vehicle (Request No. 0270-GA)

**Briefs requested by October 22, 2004**

**RQ-0271-GA**

**Requestor:**

Mr. Randall James, Commissioner  
Texas Department of Banking  
2601 North Lamar Boulevard  
Austin, Texas 78705-4294

Re: Whether a funeral establishment must comply with the requirement that it obtain a cremation authorization form signed by an authorizing agent when a decedent has previously specified disposition by cremation in a prepaid funeral contract (Request No. 0271-GA)

**Briefs requested by October 22, 2004**

**RQ-0272-GA**

**Requestor:**

The Honorable Bill Hill  
Dallas County Criminal District Attorney  
Administration Building  
411 Elm Street, 5th Floor  
Dallas, Texas 75202

Re: Whether the University of Texas Medical Branch is required to disclose protected health information of special needs offenders to those persons' legal representatives (Request No. 0272-GA)

**Briefs requested by October 22, 2004**

**RQ-0273-GA**

**Requestor:**

The Honorable Carole Keeton Strayhorn  
Comptroller of Public Accounts  
Post Office Box 13528  
Austin, Texas 78711-3528

Re: Whether section 74.401, Property Code, permits a "private" sale of unregistered, privately held stock shares to qualified institutional buyers (Request No. 0273-GA)

**Briefs requested by October 23, 2004**

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

TRD-200405929  
Nancy S. Fuller  
Assistant Attorney General  
Office of the Attorney General  
Filed: September 28, 2004



Opinions

**Opinion No. GA-0250**

Mr. Jerry Clark  
Executive Vice President and General Manager  
Sabine River Authority of Texas  
Post Office Box 579  
Orange, Texas 77631

Re: Whether a county clerk may serve simultaneously as a director of the Sabine River Authority (RQ-0203-GA)

**S U M M A R Y**

The offices of county clerk and director of the Sabine River Authority are both civil offices of emolument when occupied by separate individuals. A director of the Sabine River Authority holds a civil office of emolument regardless of whether that director accepts the compensation attached to the office. However, while article XVI, section 40 of the Texas Constitution prohibits an individual from simultaneously holding two offices of emolument, section 574.005 of the Government Code allows a local government officer to be appointed to the governing body of a state agency. Section 574.005 prohibits a local government officer from being compensated for serving in the appointed office, which prohibition renders the appointed office merely a civil office, not a civil office of emolument. Therefore, article XVI, section 40 of the Texas Constitution would not prevent a county clerk from serving simultaneously as a director of the Sabine River Authority. Furthermore, the common-law doctrine of incompatibility does not present a bar.

**Opinion No. GA-0251**

Shirley J. Neeley, Ed.D.

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701

Re: Whether section 37.081(f) of the Education Code, concerning school district peace officers, conflicts with chapter 614, subchapter B of the Government Code, concerning complaints against certain law enforcement officers, police officers, and fire fighters (RQ-0204-GA)

**S U M M A R Y**

Section 37.081(f) of the Education Code, concerning school district peace officers, does not conflict with chapter 614, subchapter B of the Government Code, concerning complaints against certain law enforcement officers, police officers, and fire fighters. A school district police department cannot take disciplinary action on a complaint against a police officer without giving the officer a copy of the complaint signed by the complainant.

**Opinion No. GA-0252**

The Honorable Phil King

Chair, Regulated Industry Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Weatherford College District may lease real property to the Wesley Foundation, an organization associated with the United Methodist Church, to construct a student center, chapel, and other facilities (RQ-0205-GA)

**S U M M A R Y**

The Weatherford College District board of trustees has implied authority under the Education Code to lease district real property to a private entity, such as the Wesley Foundation, but lacks authority to enter into a lease that interferes with the property's use for district purposes or that divests the board of its exclusive right to manage and control the property.

Section 272.001 of the Local Government Code, which governs the junior college district's authority to sell or exchange land or interests in land and generally requires a district to provide notice of the sale and to obtain bids, may apply to a long-term lease in certain circumstances.

In addition, article III, section 52(a) of the Texas Constitution would prohibit the lease if the College District received no or nominal return consideration. Assuming that is not the case, section 52(a) requires the College District's board of trustees to determine in good faith that the proposed lease serves a public purpose of the College District. In addition, the board of trustees must ensure that the lease includes sufficient controls to ensure that the public purpose is carried out.

The United States Constitution's Establishment Clause does not prohibit the College District from leasing land to the Wesley Foundation because of the Foundation's religious affiliation. Whether the lease comports with the Establishment Clause depends upon the totality of the facts, particularly the extent to which the proposed facilities would be associated with the Wesley Foundation or the United Methodist Church and the College District's past practice and general policies with respect to leasing land to private groups. Article I, sections 6 and 7 of the Texas Constitution do not prohibit the lease agreement on the basis of the nonprofit entity's religious affiliation. To comport with these provisions, the proposed lease arrangement must comport with the federal Establishment Clause. Article I, section 7 would prohibit the College District from using public funds to construct sectarian facilities and requires the College District to obtain reasonable consideration for the lease.

**Opinion No. GA-0253**

Mr. Wayne Thorburn

Commissioner

Texas Appraiser Licensing and Certification Board

Post Office Box 12188

Austin, Texas 78711-2188

Re: Whether the Texas Appraiser Licensing and Certification Board may adopt a rule establishing minimum education requirements for appraiser trainees (RQ-0207-GA)

**S U M M A R Y**

The Texas Appraiser Licensing and Certification Board may not adopt a rule establishing minimum education requirements for appraiser trainees.

**Opinion No. GA-0254**

The Honorable Bill Hill

Dallas County District Attorney

Civil Division

Administration Building

411 Elm Street, 5th Floor

Dallas, Texas 75202

Re: Whether a civil service commission's authority under section 158.035(1) of the Local Government Code to adopt and enforce rules relating to the "selection . . . of employees," impermissibly intrudes upon the sheriff's authority to select assistants, as discussed in Attorney General Opinion GA-0037 (RQ-0208-GA)

**S U M M A R Y**

A civil service commission created under chapter 158, subchapter B of the Local Government Code has express statutory authority, under section 158.035(b)(1), to limit the sheriff's authority to select assistants. The civil service commission's statutory authority to regulate personnel selection does not impermissibly intrude upon the sheriff's sphere of authority discussed in Attorney General Opinion GA-0037 (2003).

**Opinion No. GA-0255**

The Honorable Richard J. Miller

Bell County Attorney

Post Office Box 1127

Belton, Texas 76513

Re: Whether a person may waive the prohibition on public access to the person's criminal history information that is subject to a nondisclosure order (RQ-0209-GA)

**S U M M A R Y**

Government Code section 411.081(d) provides for an order prohibiting criminal justice agencies from publicly disclosing criminal history record information related to the offense giving rise to a deferred adjudication, subject to statutory exceptions. Although an individual whose information is subject to the nondisclosure order does not have statutory authority to waive the order, information subject to the order may

be disclosed to certain entities, including a non-criminal justice agency authorized by federal statute or executive order or by state statute to receive criminal history record information, such as the United States Office of Personnel Management.

If a law enforcement agency receives a request for information subject to a section 411.081(d) nondisclosure order from a person who is not authorized to receive the information, the agency may inform the person that it has "no record."

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

TRD-200405925

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: September 28, 2004

◆ ◆ ◆

# 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 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 1. LIBRARY DEVELOPMENT

##### SUBCHAPTER C. MINIMUM STANDARDS FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

The Texas State Library and Archives Commission proposes amendments to §1.74 and §1.81, and proposes the repeal and new of §1.83, regarding accreditation standards for system membership.

Deborah Littrell, Library Development Division Director, has determined that for the first five years the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections.

Ms. Littrell also has determined that for each of the first five years the proposed sections are in effect the public benefits anticipated as a result of enforcing the proposed sections will be to strengthen local libraries. There are no cost implications to either small businesses or persons required to comply with the proposed sections.

Written comments on this proposal may be submitted to Deborah Littrell, Director, Library Development Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927; or by fax (512) 463-8800.

#### 13 TAC §§1.74, 1.81, 1.83

The amendments and new section are proposed under the authority of Government Code §441.127, that provides the Commission authority to establish accreditation standards for system membership.

The proposed amendments and new section affect the Government Code, §441.127.

#### §1.74. *Local Operating Expenditures.*

A public library must demonstrate local effort on an annual basis by maintaining or increasing local operating expenditures or per capita local operating expenditures. Expenditures for the current reporting year shall be compared to the average of local operating expenditures or to the average of per capita local operating expenditures for the three preceding years. Libraries that expend at least \$13.50 ~~[\$10.00]~~ per capita and at least \$125,000 ~~[\$50,000]~~ are exempt from this membership criterion. A public library shall have minimum local expenditures of \$5,000 in local fiscal years 2004, 2005, 2006; \$10,000 in local fiscal years 2007, 2008, 2009; \$10,300 in local fiscal years 2010, 2011, 2012; \$10,650 in local fiscal years 2013, 2014, 2015.

#### §1.81. *Quantitative Standards for Accreditation of Library.*

(a) The definition of "local fiscal year" is the fiscal year in which January 1 of that year falls.

(b) The minimum ~~[Minimum]~~ requirements for membership in the state library system in local fiscal years 2004, 2005, and 2006; ~~[of public libraries in the Texas Library System.]~~

(1) A library serving a population of at least 200,001 persons must:

(A) have local expenditures amounting to at least \$2.80 per capita;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) be open for service not less than 64 hours per week; and

(D) have six professional full-time librarians, with one additional professional full-time librarian for every 50,000 persons above 200,000; an additional professional full-time librarian must be assigned full time to system duties if the library is a major resource center. See §1.47 of this title (relating to Consulting and Continuing Education Services) for definition of a professional librarian.

(2) A library serving a population of 100,001 - 200,000 persons must:

(A) have local expenditures amounting to at least \$2.40 per capita;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) be open for service not less than 54 hours per week; and

(D) have four professional full-time librarians, with one additional professional full-time librarian for each 50,000 persons above 100,000; an additional professional librarian must be assigned full time to system duties if the library is a major resource center.

(3) A library serving a population of 50,001 - 100,000 persons must:

(A) have local expenditures amounting to at least \$2.20 per capita;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) be open for service not less than 48 hours per week; and

(D) have at least two professional full-time librarians.

(4) A library serving a population of 25,001 - 50,000 persons must:

(A) have local expenditures of at least \$1.80 per capita;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) be open for service not less than 40 hours per week; and

(D) have at least one professional full-time librarian.

(5) A library serving a population of 10,001 - 25,000 persons must:

(A) have local expenditures of at least \$1.50 per capita;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials, provided that in either case a minimum of 7,500 items are held;

(C) be open for service not less than 30 hours per week; and

(D) have a head librarian who is employed in library duties at least 30 hours per week.

(6) A library serving a population of 10,000 or fewer persons must:

(A) have local expenditures of \$1.20 per capita or \$5,000, whichever is greater;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials, provided that in either case a minimum of 7,500 items are held;

(C) be open for service not less than 20 hours per week; and

(D) have a head librarian who is employed in library duties at least 20 hours per week.

(c) After local fiscal year 2006, the minimum requirements for membership in the state library system:

(1) A library serving a population of at least 500,001 persons must:

(A) have local expenditures amounting to at least \$13.00 per capita in local fiscal years 2007, 2008, 2009; \$13.40 per capita in local fiscal years 2010, 2011, 2012; \$13.82 per capita in local fiscal years 2013, 2014, 2015.

(B) Have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) Be open for service not less than 64 hours per week; and

(D) Have twelve professional full-time librarians, with one additional professional full-time librarian for every 50,000 persons above 500,000; an additional professional full-time librarian must be assigned full time to system duties if the library is a major resource center. See §1.47 of this title for definition of a professional librarian.

(2) A library serving a population of 200,001 - 500,000 persons must:

(A) have local expenditures amounting to at least \$11.25 per capita in local fiscal years 2007, 2008, 2009; \$11.60 per capita in local fiscal years 2010, 2011, 2012; \$11.95 per capita in local fiscal years 2013, 2014, 2015;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) be open for service not less than 64 hours per week; and

(D) have six professional full-time librarians, with one additional professional full-time librarian for every 50,000 persons above 200,000; an additional professional full-time librarian must be assigned full time to system duties if the library is a major resource center. See §1.47 of this title (relating to Consulting and Continuing Education Services) for definition of a professional librarian.

(3) A library serving a population of 100,001 - 200,000 persons must:

(A) have local expenditures amounting to at least \$9.00 per capita in local fiscal years 2007, 2008, 2009; \$9.30 per capita in local fiscal years 2010, 2011, 2012; \$9.60 per capita in local fiscal years 2013, 2014, 2015;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) be open for service not less than 54 hours per week; and

(D) have four professional full-time librarians, with one additional professional full-time librarian for each 50,000 persons above 100,000; an additional professional librarian must be assigned full time to system duties if the library is a major resource center.

(4) A library serving a population of 50,001 - 100,000 persons must:

(A) have local expenditures amounting to at least \$7.50 per capita in local fiscal years 2007, 2008, 2009; \$7.75 per capita in local fiscal years 2010, 2011, 2012; \$8.00 per capita in local fiscal years 2013, 2014, 2015;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) be open for service not less than 48 hours per week; and

(D) have at least two professional full-time librarians.

(5) A library serving a population of 25,001 - 50,000 persons must:

(A) have local expenditures of at least \$5.00 per capita in local fiscal years 2007, 2008, 2009; \$5.15 in local fiscal years 2010, 2011, 2012; \$5.31 per capita in local fiscal years 2013, 2014, 2015;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) be open for service not less than 40 hours per week; and

(D) have at least one professional full-time librarian.

(6) A library serving a population of 10,001 - 25,000 persons must:

(A) have local expenditures of at least \$4.00 per capita in local fiscal years 2007, 2008, 2009; \$4.12 per capita in local fiscal years 2010, 2011, 2012; \$4.25 per capita in local fiscal years 2013, 2014, 2015;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials, provided that in either case a minimum of 7,500 items are held;

(C) be open for service not less than 30 hours per week;  
and

(D) have a head librarian who is employed in library duties at least 30 hours per week.

(7) A library serving a population of 5,001 - 10,000 must:

(A) have local expenditures of at least \$3.75 per capita in local fiscal years 2007, 2008, 2009; \$3.85 per capita in local fiscal years 2010, 2011, 2012; \$3.97 per capita in local fiscal years 2013, 2014, 2015;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials; provided that in either case a minimum of 7,500 items are held.

(C) be open for service not less than 20 hours per week;  
and

(D) have a head librarian who is employed in library duties at least 20 hours per week.

(8) A library serving a population of 5,000 or fewer persons must:

(A) have local per capita expenditures or minimum total local expenditures, whichever is greater, of \$3.50 per capita or \$10,000 total in local fiscal years 2007, 2008, 2009; \$3.60 per capita or \$10,300 total in local fiscal years 2010, 2011, 2012; \$3.70 per capita or \$10,650 in local fiscal years 2013, 2014, 2015;

(B) Have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials, provided that in either case a minimum of 7,500 items are held;

(C) Be open for service not less than 20 hours per week;  
and

(D) Have a head librarian who is employed in library duties at least 20 hours per week.

§1.83. Other Requirements.

Each public library applying for membership in the Texas Library System must meet the following requirements:

(1) By local fiscal year 2004, a library must have a telephone with a listed number.

(2) By local fiscal year 2005, a library must have available both a photocopier and a computer with Internet access for use by the library staff and the general public.

(3) By local fiscal year 2005, a public library shall offer to borrow materials via the interlibrary loan resource sharing service for persons residing in the library's designated service area. A library shall also participate in the interlibrary loan resource sharing service by lending its materials to other libraries, as requested. The library governing board may adopt policies regarding materials available for loan and the length of the loan, the good standing of the borrower, and other

relevant issues; these policies must be posted on the library system's web site.

(4) By local fiscal year 2005, a public library director shall have a minimum of ten hours of continuing education credits annually. These continuing education hours must meet the qualitative requirements of §5.4 of this title (relating to Term).

(5) By local fiscal year 2006, a public library shall have a catalog of its holdings available to the public that is searchable, either manually or electronically, at a minimum by author, title, and subject.

(6) By local fiscal year 2006, a public library shall have a long-range plan that is approved by its governing board. This plan must be reviewed and updated at least every five years and must include a collection development element. Library systems shall provide public libraries with the consulting and continuing education services necessary to develop these plans as part of the services provided under §1.47 of this title (relating to Consulting and Continuing Education Services).

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

Filed with the Office of the Secretary of State on September 27, 2004.

TRD-200405910

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 463-5459



**13 TAC §1.83**

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

The repeal is proposed under the authority of Government Code §441.127, that provides the Commission authority to establish accreditation standards for system membership.

The proposed repeal affects the Government Code, §441.127.

§1.83. *Telephone Requirement.*

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 September 28, 2004.

TRD-200405919

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 463-5459



**CHAPTER 6. STATE RECORDS**

## SUBCHAPTER A. RECORDS RETENTION SCHEDULING

### 13 TAC §§6.2 - 6.7, 6.9, 6.10

*(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §6.10 is not included in the print version of the Texas Register. The figure is available in the on-line issue of the October 8, 2004, issue of the Texas Register.)*

The Texas State Library and Archives Commission proposes amendments to 13 TAC §§6.2 - 6.7, 6.9, and 6.10, relating to records retention scheduling by state agencies.

The proposed amendments provide that state agencies that have records retention schedules that have been initially certified and then been recertified for two consecutive years be required to submit their schedules for recertification every three years rather than every two years. The proposed amendments provide for the method of submission of records schedules for agencies that through legislative action become administratively attached to another agency. The proposed amendments also include a revised Texas State Records Retention Schedule, which establishes minimum retention periods for records common to all state agencies. Although a few retention periods on the schedule have been revised upward to conform to the requirements of the Sarbanes-Oxley Act and a few new series added, most of the changes have been made in response to suggestions for clarification from state agency records management officers and do not involve significant changes to retention periods.

Michael Heskett, State Records Administrator, has determined that for each year of the first five years after adoption of the proposed amendments, there will be no fiscal implications for local governments as a result of the adoption of the amendments because the commission's proposed amended rules are not applicable to local governments. Mr. Heskett anticipates that there will be cost savings to state agencies that are subject to the proposed amended rules during the first five years after the adoption. The savings will vary depending on two principal factors: the size of the agency and the level of its engagement in sound records and information management practices. For small agencies with simple records management programs, the savings will be small; for larger agencies in which records management is firmly embedded throughout agency procedures, the cost savings will be several thousand dollars per year in staff time that can be devoted to aspects of records management other than scheduling.

Mr. Heskett does not anticipate either a loss of, or an increase, in revenue to state or local government as a result of the proposed amendments. There will be no impact on small businesses or individuals as a result of enforcing the amended rules. The public benefit of the proposed amendments is that it will permit state agencies and commission staff to devote more time to the myriad of issues confronting the management of government records, particularly those in electronic format.

Written comments on the proposed amendments may be submitted to Tim Nolan, State and Local Records Management Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711; or tim.nolan@tsl.state.tx.us; or by fax to (512) 323-6100.

The amendments are proposed under Government Code §441.185(e), which authorizes the Texas State Library and Archives Commission to adopt rules relating to the submission of records retention schedule to the state records administrator.

Government Code, §441.185 and §441.186, are affected by the proposal.

#### §6.2. *Submission of Records Retention Schedules for Certification.*

(a) A [Each] state agency, if it does not have a certified schedule, must submit a records retention schedule to the state records administrator for initial certification within one year of the effective date of this section or within one year of the effective date of establishment of a new state agency, whichever later.

(b) For the purposes of this section, a state agency is considered a new state agency or component if through legislative action subsequent to the adoption of this section, it:

(1) (No change.)

(2) is the product of a merger between [components of] two or more state agencies or components;

(3) is a component or components separated from a state agency or agencies and designated as an independent state agency;[-] or

(4) (No change.)

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

#### §6.3. *Submission of Records Retention Schedules for Recertification.*

(a) After initial certification, a [A] records retention schedule must be submitted to the state records administrator for recertification one year from the date of certification or recertification [annually] for the first two recertification periods [years after initial certification].

(b) After the second recertification, a records retention schedule must be submitted for recertification every three [one every two] years from the date of the last recertification, except for the following situations.

(1) If a state agency with a certified schedule absorbs another state agency; the records retention schedule must be submitted for recertification within one year of the effective date of the reorganization, and then will revert, when the schedule is recertified, to annual or triennial [biennial] certification depending on the certification status of the absorbing agency under this section at the time of absorption.

(2) (No change.)

(c) (No change.)

(d) If a state agency with a certified schedule administers another state agency with a certified schedule, the records management officer of the administering agency may use the certified schedule of the administratively attached agency as the basis for lawful disposition of the records of the administratively attached agency until the records retention schedule of the administering agency is recertified in accordance with this section.

(e) [(+)] A records retention schedule due for recertification under this section must be submitted to the state records administrator no later than one year from the end of the month in which the schedule was certified or last recertified (or three [two] years if the state agency is due for triennial [biennial] recertification).

(f) [(+)] At the discretion of the state records administrator and on petition from the records management officer of a state agency that it will be impossible to comply fully with the requirements of subsection



(e) [(d)] of this section, the state records administrator may extend the deadline for submission of the records retention schedule for up to 3 months [90 days] from the end of the month the recertification of the schedule was due. One or more additional extensions may be granted, but in no case may the first extension and any additional extensions be for a combined period of more than one year from the end of the month the recertification was due.

#### §6.4. *Submission of Amendments to Records Retention Schedules.*

During a certification period the records management officer must keep the agency's retention schedule current by submitting amendments to the schedule to:

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

(4) indicate changes to information concerning a records series required under subsection (a)[(2)] of §6.5 (relating to Certification of Records Retention Schedules and Amendments).

#### §6.5. *Certification of Records Retention Schedules and Amendments.*

(a) To be a candidate for certification, a records retention schedule must:

(1) list all records series maintained by the state agency, regardless of medium;

(2) indicate whether the records are archival state records or state records that must be reviewed by the state archivist for potential archival value prior to their destruction; [the following for each record series:]

~~[(A) whether the records are confidential state records or open to access by the public;]~~

~~[(B) whether the records are archival state records or state records that must be reviewed by the state archivist for potential archival value prior to their destruction;]~~

~~[(C) the medium of the records and if the records are converted from one medium to another; and]~~

~~[(D) whether the records are vital state records;]~~

(3) - (5) (No change.)

(b) (No change.)

(c) To be certified, a records retention schedule or an amendment to the schedule must be approved by the [state auditor and the] director and librarian and may also require the approval of the state auditor.

#### §6.6. *Decertification.*

(a) If a state agency fails to submit a records retention schedule to the state records administrator for recertification by a required deadline or fails to request an extension, the certification of the currently approved schedule and any approved amendments to the schedule expires one year from the end of the month in which the schedule was initially certified or last recertified (or three [two] years if the state agency is due for triennial [biennial] recertification).

(b) (No change.)

(c) If a state agency refuses to cooperate with the commission, the director and librarian, and any other authorized designee of the director and librarian in fulfilling their duties in accordance with Government Code §441.183, the director and librarian may order the decertification of its approved records retention schedule, with decertification effective 30 days from the date of the order.

(d) [(e)] If its records retention schedule is decertified according to this section, a state agency is no longer authorized to destroy

records based on the schedule and must submit requests for the destruction of its records in accordance with §6.7 of this title (relating to Destruction of State Records).

#### §6.7. *Destruction of State Records.*

(a) (No change.)

(b) A state agency with a certified records retention schedule must request authorization from the director and librarian for the destruction of any state record that does not appear on the certified schedule or a certified amendment to the schedule.

(c) (No change.)

#### §6.9. *Notification by State Records Administrator.*

Within 30 days of the effective date of this section [these sections], the state records administrator shall furnish a written notice to each state agency of its status with regard to [that is not in current compliance with] the submission requirements of §6.2 of this title (relating to Submission of Records Retention Schedules for Certification) and §6.3 of this title (relating to Submission of Records Retention Schedules for Recertification).

#### §6.10. *Texas State Records Retention Schedule [Records Retention Schedules].*

A record listed in the Texas State Records Retention Schedule must be retained for the retention period indicated by any state agency that maintains a record of the type described. [The retention periods for and disposition of certain state records must be in accordance with the Texas State Records Retention Schedule (Second Edition).]

Figure: 13 TAC §6.10

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 September 27, 2004.

TRD-200405911

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 463-5459



## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 5. RAIL SAFETY RULES

##### SUBCHAPTER C. RAIL SAFETY PROGRAM

###### 16 TAC §5.301

The Railroad Commission of Texas proposes amendments to §5.301, relating to Rail Safety Program Fee. The purpose of the amendments is to provide a reasonable basis to calculate a fee to be assessed annually against railroads operating within the state, as required by Section 11, House Bill (HB) 3442, 78th Legislature, Regular Session (2003), which added new Section 2 to Article 6448a, Revised Statutes.

The statute provides that the Commission shall by rule establish the method by which the fees will be calculated and assessed

and that the Commission may consider, but is not limited to, using gross ton miles for railroad operations in the state to provide for the equitable allocation among railroads of the cost of administering the Commission's rail safety program. The current rule requires that each railroad operating within the state report its actual or estimated annual gross ton miles to the Commission. The three largest railroads in the state are required to report their annual gross ton miles to the United States Surface Transportation Board (USSTB). For these railroads, it is not a significant burden to report their gross ton miles for operations within the state. Because a fee based on gross ton miles will ensure that each of these large railroads will pay a fee in proportion to each railroad's annual gross ton miles, the Commission finds that assessing the fee based on gross ton miles will assure that the fees are equitably allocated among the three large railroads that document their gross ton miles.

However, the smaller railroads in the state do not document or calculate their gross ton miles, and estimating their gross ton miles, as required by the current rule, is a burdensome task. Commission staff has determined that out of 39 reports filed by the smaller railroads for the calendar year 2002, only two of those railroads indicated that they compile annual gross ton mile data and the remaining 37 small railroads indicate that they do not. To determine an equitable method for calculating the fee to be paid by the smaller railroads, the Commission submitted a questionnaire to the smaller railroads in 2003. Of the 26 small railroads that responded to the questionnaire, all indicated that they document the number of rail cars that they interchange and all 26 were able to report the number of car interchanges they performed in a calendar year. For the smaller railroads, assessing a fee based on rail car interchanges will assure that the fees are equitably allocated among the smaller railroads according to the size of each railroad's operations within the state.

The Commission is required by Section 2 of Article 6448a, Revised Statutes, to provide for the equitable allocation among the railroads of the cost of administering the commission's rail safety program. Commission staff has determined that it allocates 95% of its rail resources to those larger railroads which report their gross ton miles to the USSTB. The Commission allocates 5% of its rail resources to the smaller railroads which do not document their gross ton miles but document their number of rail car interchanges. The Commission proposes to allocate 95% of the fees to be collected from the railroads reporting their gross ton miles to the USSTB and 5% of the fees to be collected from the railroads reporting the number of rail cars interchanged, in compliance with the statutory mandate to provide for the equitable allocation among the railroads of the cost of administering the commission's rail safety program.

Section 5.301(a) is not changed by the proposed amendments. It provides that each railroad operating within the state must pay an annual fee.

Proposed §5.301(b)(1) defines the term "gross ton miles" to mean either the combined weight of all rail cars and their contents, exclusive of locomotives, multiplied by the number of miles traveled in the state within a calendar year; or, if a railroad has reported its calendar year gross ton miles on a Form R-1 filed with the USSTB, that portion of the reported gross ton miles that are for operations within the state.

Proposed §5.301(b)(2) defines the term "interchanged" to mean transferred from one railroad to another. The proposed amendment deletes the requirement currently in §5.301(b) that each railroad operating within the state must report its gross

ton mileage to the Commission no later than July 1 of each calendar year.

Proposed §5.301(c) provides that each railroad operating within the state that is required to report its gross ton miles to the USSTB must report to the Commission, no later than July 1 of each calendar year, the railroad's gross ton miles for the preceding calendar year. The report must be in writing, signed by a duly authorized officer of the railroad, and verified. Proposed §5.301(c) would delete the definition of "gross ton mileage" in the current rule, including that portion of the definition that would authorize a railroad to report a good faith estimate of its gross ton miles.

Proposed §5.301(d) provides that each railroad operating within the state that is not required to report its gross ton miles to the USSTB must report to the Commission, no later than July 1 of each calendar year, the railroad's total number of rail cars interchanged for the preceding calendar year. The report must be in writing, signed by a duly authorized officer of the railroad, and verified. Proposed §5.301(d) would delete the requirement that the Commission determine the fee for all railroads based on gross ton miles.

Proposed §5.301(e) provides that the Commission will determine the annual fee for each railroad operating in the state.

Proposed new §5.301(e)(1) provides that the Commission will determine the annual fee for each railroad that is required to report its gross ton miles to the Commission as follows: (A) each railroad's gross ton miles will be divided by the total gross ton miles of all railroads required to report their gross ton miles to the Commission; and (B) the result will be multiplied by 95% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the next state fiscal year.

Proposed new §5.301(e)(2) provides that the Commission will determine the annual fee for each railroad that is required to report its total cars interchanged to the Commission as follows: (A) each railroad's total number of rail cars interchanged will be divided by the total number of rail cars interchanged by all railroads required to report rail car interchanges to the Commission; and (B) the result will be multiplied by 5% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the next state fiscal year.

Proposed §5.301(f) is a redesignation of current §5.301(e). It provides that the Commission will, no later than September 1 of each calendar year, notify each railroad operating in the state of the amount of that railroad's fee that is due and payable.

Proposed §5.301(g) is a redesignation of current §5.301(f) and provides that each railroad operating in the state must, no later than November 1 of each calendar year, pay its assessed fee to the Commission. The payment must be made payable to the State of Texas and will be considered by the Commission to be timely made if it is received by the Commission on or before November 1 of the same calendar year in which notice has been given pursuant to proposed §5.301(f), or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before November 1 of the same calendar year in which notice has been given pursuant to proposed §5.301(f), and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service will be prima facie evidence of the date of mailing.

Proposed §5.301(h) is a redesignation of current §5.301(g).

Proposed new §5.301(h)(1) provides that if a railroad does not timely report its gross ton miles, as required by §5.301(c), the Commission may make a good-faith estimate of the railroad's gross ton miles and assess the railroad's fee based on that estimate. Failure by a railroad to timely report its gross ton miles will constitute a waiver by the railroad to object to both the Commission's estimate and the fee based on the estimate.

Proposed new §5.301(h)(2) provides that if a railroad does not timely report its total rail cars interchanged, as required by §5.301(d), the Commission may make a good-faith estimate of the railroad's total cars interchanged and assess the railroad's fee based on that estimate. Failure by a railroad to timely report its total cars interchanged will constitute a waiver by the railroad to object to both the Commission's estimate and the fee based on the estimate.

Proposed new §5.301(h)(3) provides that if the Commission has a rational basis for questioning either the gross ton miles or the total cars interchanged reported by a railroad, the Commission may, by letter, fax, or electronic mail, request the railroad to provide documentation or other evidence demonstrating how the railroad determined its reported gross ton miles or total cars interchanged. The request must state the Commission's rational basis for questioning the reported gross ton miles or the reported total cars interchanged, and will inform the railroad that it may deliver such documentation or evidence to the Commission by hand delivery, mail, fax, electronic mail or private carrier. If the Commission determines that a railroad has not provided sufficient documentation or other evidence within 14 calendar days of the request, the Commission may proceed as if the railroad did not timely report its gross ton miles or the total cars interchanged. The Commission will inform a railroad whether it accepts the railroad's documentation or evidence or whether it is proceeding under paragraph (1) or (2) of §5.301(h).

Proposed §5.301(i) is a redesignation of current §5.301(h) and provides that fees collected under this section must be deposited to the credit of the general revenue fund to be used for the rail safety program.

The Commission proposes to delete current §5.301(i), which is a temporary provision providing for the assessment of rail safety fees for the calendar year 2002 and which is ineffective by its terms after May 10, 2004.

Mary McDaniel, Director, Safety Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. The proposed amendments do not change the number of railroads that are currently required to report and pay the fee and the Commission does not expect to incur any additional expense in determining and assessing the fees because current Commission resources, e.g., offices, staff, and fees received under the proposed amendments to the rule, will be adequate for the Commission to meet its undertaking pursuant to the proposed amendments to §5.301. The fees collected, estimated to be approximately \$1,309,104 for the fiscal year beginning September 1, 2003, will total the estimated cost of administering the Commission's rail safety program. There are no fiscal implications for local governments.

Ms. McDaniel has also determined that for each year of the first five years the amendments are proposed to be in effect, the public benefit will be continued rail safety oversight throughout the state at the expense of the railroads operating in the state.

There are minimal anticipated costs to small businesses and micro-businesses required to comply with the amendments. As a result of the proposed amendments, each railroad operating in the State of Texas will be required to report either its annual gross ton miles or annual total of rail cars interchanged to the Commission and to pay a fee based on the reported totals. The Commission has determined that the three largest railroads operating in Texas, which are neither small businesses nor micro-businesses, will pay 95% of the total fees. These railroads currently report their national gross ton miles annually to the federal government; they also break out their annual gross ton miles for Texas. The smaller railroads currently document the number of rail cars they interchange. The smaller railroads will pay a significantly smaller fee; the Commission has determined that the 39 smaller railroads will together pay only 5% of the total fees.

The Commission considered establishing a flat fee for the smaller railroads, but due to the diversity in size of the smaller railroads, the Commission determined that a flat fee would be unduly burdensome on the smallest railroads. The Commission considered a complete exemption for the smaller railroads from §5.301, but determined that an exemption would not comply with Section 2 of Article 6448a, Revised Statutes, which calls for an equitable allocation among the railroads of the cost of the rail safety program.

Pursuant to Texas Government Code, §2006.002(c), the Commission cannot determine the cost for each small business or micro-business operating a railroad in the state because a railroad's costs associated with compliance is minimal, as each such business already documents the number of rail cars it has interchanged. The Commission assumes that there are railroads that meet the definitions of "micro-business" and "small business" set forth in Texas Government Code, §2006.001(1) and (2), respectively; however, the Commission does not have data showing the expense for each employee, the expense for each hour of labor, or the total sales revenue for each railroad in the state. Therefore, the Commission is not able to determine the exact cost of compliance based on the cost for each employee, the cost for each hour of labor, or the cost for each \$100 of sales pursuant to Texas Government Code, §2006.002(c). However, the proposed amendments provide that the amount of the fee to be paid annually by a railroad that is a small or micro-business will be proportional to the amount of rail cars interchanged reported by that railroad versus the total amount reported by all the smaller railroads. Further, Section 2 of Article 6448a, Revised Statutes, requires that the fees be reasonable, that the total amount of the fees collected shall not exceed the amount estimated by the Commission to be necessary to recover the costs of administering the rail safety program, and that the Commission provide for the equitable allocation of the cost among the railroads. These statutory requirements ensure that small business and micro-business railroads will pay significantly smaller fees than the largest businesses required to pay the fee. Therefore, the statute reduces the adverse effect the proposed amended rule could have on individuals, small businesses, or micro-businesses. Because the fees are statutory, the Commission does not have authority to further reduce the adverse effect of the proposed rule on small or micro-businesses. Thus, pursuant to Texas Government Code, §2006.002, the Commission finds that, considering the purpose of Section 2 of Article 6448a, Revised

Statutes, any adverse effect the proposed amended rule could have on individuals, small businesses, or micro-businesses has been reduced by the proposed amendments to the extent authorized by the statute.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.state.tx.us/rules/commentform.html](http://www.rrc.state.tx.us/rules/commentform.html); or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). The Commission will accept comments for 30 days after publication in the *Texas Register*; comments should refer to Rail Docket No. 3768.RUL. The Commission encourages all persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. McDaniel at (512) 463-7167. The status of Commission rulemakings in progress is available at [www.rrc.state.tx.us/rules/proposed.html](http://www.rrc.state.tx.us/rules/proposed.html).

The Commission proposes the amendments under Section 2, Article 6448a, Revised Statutes, as enacted by Section 11, HB 3442, 78th Legislature, Regular Session, 2003, which requires the Commission by rule to adopt reasonable fees to be assessed annually against railroads operating within the state and further requires that the total amount of fees estimated to be collected may not exceed the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program. The legislation provides that the Commission may consider gross ton miles for railroad operations within the State of Texas to provide for the equitable allocation among railroads of the cost of administering the rail safety program and that collected fees be deposited to the credit of the general revenue fund to be used for the rail safety program.

Statutory authority: Section 2, Article 6448a, Revised Statutes, as added by HB 3442, 78th Legislature, Regular Session, 2003; Texas Government Code, §2001.006.

Cross reference to statute: Section 2, Article 6448a, Revised Statutes, as added by HB 3442, 78th Legislature, Regular Session, 2003.

Issued in Austin, Texas on September 21, 2004.

*§5.301. Rail Safety Program Fee.*

(a) Each railroad operating within the state shall pay an annual fee as provided by this section.

(b) The following terms, when used in this section, shall have the following meanings:

(1) "gross ton miles" means:

(A) the combined weight of all rail cars and their contents, exclusive of locomotives, multiplied by the number of miles traveled in the state within a calendar year; or

(B) if a railroad has reported its calendar year gross ton miles on a Form R-1 filed with the United States Surface Transportation Board (USSTB), that portion of the reported gross ton miles that are for operations within the state.

(2) "interchanged" means transferred from one railroad to another.

~~(b) Each railroad operating within the state shall report to the Commission, no later than July 1 of each calendar year, the railroad's gross ton miles for the preceding calendar year. The report shall be in writing, signed by a duly authorized officer of the railroad, and shall be verified.~~

~~(c) Each railroad operating within the state that is required to report its gross ton miles to the USSTB shall report to the Commission, no later than July 1 of each calendar year, the railroad's gross ton miles for the preceding calendar year. The report shall be in writing, signed by a duly authorized officer of the railroad, and verified.~~

~~[(e) As used in this section, "gross ton miles" means:]~~

~~[(1) the combined weight of all rail cars and their contents, exclusive of locomotives, multiplied by the number of miles traveled in the state within a calendar year; or]~~

~~[(2) if a railroad has reported its calendar year gross ton miles on a Form R-1 filed with the United States Surface Transportation Board (USSTB), that portion of the reported gross ton miles that are for operations within the state; or]~~

~~[(3) if a railroad is not required to file a Form R-1 with the USSTB, and if determining the railroad's actual calendar year gross ton miles is unduly burdensome, the railroad's good-faith estimate of gross ton miles as defined in paragraph (1) of this subsection.]~~

~~(d) Each railroad operating within the state that is not required to report its gross ton miles to the USSTB, shall report to the Commission, no later than July 1 of each calendar year, the railroad's total number of rail cars interchanged for the preceding calendar year. The report shall be in writing, signed by a duly authorized officer of the railroad, and verified.~~

~~[(d) The Commission shall determine the annual fee for each railroad operating in the state as follows:]~~

~~[(1) each railroad's gross ton miles will be divided by the total gross ton miles of all railroads operating in the state; and]~~

~~[(2) the result will be multiplied by the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the next state fiscal year.]~~

~~(e) The Commission shall determine the annual fee for each railroad operating in the state as follows:~~

~~(1) for each railroad that is required to report its gross ton miles to the Commission:~~

~~(A) each railroad's gross ton miles will be divided by the total gross ton miles of all railroads required to report gross ton miles to the Commission; and~~

~~(B) the result will be multiplied by 95% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the next state fiscal year.~~

~~(2) for each railroad that is required to report its total rail cars interchanged to the Commission:~~

~~(A) each railroad's total number of rail cars interchanged will be divided by the total number of rail cars interchanged by all railroads required to report rail car interchanges to the Commission; and~~

~~(B) the result will be multiplied by 5% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the next state fiscal year.~~

~~(f) [(e)] The Commission shall, no later than September 1 of each calendar year, notify each railroad operating in the state of the amount of that railroad's fee that is due and payable.~~

(g) ~~[(f)]~~ Each railroad operating in the state shall, no later than November 1 of each calendar year, pay its assessed fee to the Commission. The payment shall be made payable to the State of Texas and shall be considered by the Commission to be timely made if it is received by the Commission on or before November 1 of the same calendar year in which notice has been given pursuant to subsection (f) ~~[(e)]~~ of this section, or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before November 1 of the same calendar year in which notice has been given, pursuant to subsection (f) ~~[(e)]~~ of this section, and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

(h) ~~[(g)]~~ The following requirements apply to railroad reports.

(1) If a railroad does not timely report its gross ton miles as required by subsection (c) of this section, the Commission may make a good-faith estimate of the railroad's gross ton miles and assess the railroad's fee based on that estimate. Failure by a railroad to timely report its gross ton miles constitutes a waiver by the railroad to object to both the Commission's estimate and the fee based on the estimate.

(2) If a railroad does not timely report its total rail cars interchanged as required by subsection (d) of this section, the Commission may make a good-faith estimate of the railroad's total cars interchanged and assess the railroad's fee based on that estimate. Failure by a railroad to timely report its total cars interchanged constitutes a waiver by the railroad to object to both the Commission's estimate and the fee based on the estimate.

(3) ~~[(2)]~~ If the Commission has a rational basis for questioning the gross ton miles or the total rail cars interchanged reported by a railroad, the Commission may, by letter, fax, or electronic mail, request the railroad to provide documentation or other evidence demonstrating how the railroad determined its reported gross ton miles or its reported total rail cars interchanged. The request shall state the Commission's rational basis for questioning the reported gross ton miles or the reported total rail cars interchanged and shall inform the railroad that it may deliver such documentation or evidence to the Commission by hand delivery, mail, fax, electronic mail, or private carrier. If the Commission determines that a railroad has not provided sufficient documentation or other evidence within 14 calendar days of the request, the Commission may, in the case of a railroad required to report its gross ton miles, proceed under paragraph (1) of this subsection as if the railroad did not timely report its gross ton miles or, in the case of a railroad required to report its total rail cars interchanged, proceed under paragraph (2) of this subsection as if the railroad did not timely report its total rail cars interchanged. The Commission shall inform a railroad whether it accepts the railroad's documentation or evidence or whether it is proceeding under paragraph (1) or (2) of this subsection.

(i) ~~[(h)]~~ Fees collected under this section shall be deposited to the credit of the general revenue fund to be used for the rail safety program.

~~[(i)]~~ This subsection controls during the period beginning on the effective date of this section and ending on May 10, 2004. The definition of "gross ton miles" in subsection (e) of this section applies to this section.

~~[(1)]~~ This paragraph applies to each railroad operating within this state that is required to report its gross ton miles to the USSTB.

~~[(A)]~~ Each railroad shall report to the Commission, no later than October 15, 2003, the railroad's gross ton miles for the calendar year 2002. The report shall be in writing, signed by a duly authorized officer of the railroad, and shall be verified.

~~[(B)]~~ The Commission shall determine the annual fee of each railroad operating in the state as follows:

~~[(i)]~~ each railroad's gross ton miles for calendar year 2002 will be divided by the total gross ton miles reported by all railroads under this paragraph for calendar year 2002; and

~~[(ii)]~~ the result will be multiplied by 95% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the state fiscal year that begins on September 1, 2003.

~~[(C)]~~ The Commission shall, no later than November 1, 2003, notify each railroad of the amount of the railroad's annual fee that is due and payable.

~~[(D)]~~ Each railroad shall, no later than December 31, 2003, pay the fee to the Commission as provided in subsection (f) of this section, except that the Commission shall consider the payment to be timely made if it is received by the Commission on or before December 31, 2003, or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before December 31, 2003, and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

~~[(2)]~~ This paragraph applies to each railroad operating within this state that is not required to report its gross ton miles to the USSTB.

~~[(A)]~~ Each railroad shall report to the Commission, no later than February 1, 2004, the railroad's gross ton miles for calendar year 2002. The report shall be in writing, signed by a duly authorized officer of the operator, and shall be verified.

~~[(B)]~~ The Commission shall determine the annual fee of each such railroad operating in the state as follows:

~~[(i)]~~ each railroad's gross ton miles for calendar year 2002 will be divided by the total gross ton miles reported by all railroads under this paragraph for the calendar year 2002; and

~~[(ii)]~~ the result will be multiplied by 5% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the state fiscal year that begins on September 1, 2003.

~~[(C)]~~ The Commission shall, no later than March 1, 2004, notify each railroad of the amount of the railroad's annual fee that is due and payable.

~~[(D)]~~ Each railroad shall, no later than April 30, 2004, pay the fee to the Commission as provided in subsection (f) of this section, except that the Commission shall consider the payment to be timely made if it is received by the Commission on or before April 30, 2004, or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before April 30, 2004, and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

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 September 21, 2004.

TRD-200405814

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 475-1295



## CHAPTER 20. ADMINISTRATION

### SUBCHAPTER A. CONTRACTS AND PURCHASES

#### DIVISION 1. BID PROTESTS, HUBS, AND BID OPENINGS

##### 16 TAC §20.5

The Railroad Commission of Texas (Commission) proposes amendments to §20.5, relating to Historically Underutilized Businesses. The rule adopts by reference the rules of the Texas Building and Procurement Commission (TBPC) in 1 Texas Administrative Code, §§111.11 - 111.28, relating to historically underutilized business program, and promotes full and equal business opportunity for all businesses in state contracting.

The Commission proposes to amend each paragraph in subsection (a) to add the title of each TBPC rule; amend subsection (a)(4) to incorporate TBPC's recent amendments to 1 Texas Administrative Code §111.14, effective September 1, 2004; amend subsection (a)(16) to incorporate TBPC's recent proposal to amend 1 Texas Administrative Code §111.27; and repeal subsection (a)(13) based on TBPC's recent proposal to repeal 1 Texas Administrative Code §111.23. By changing the date of the TBPC rule which the Commission adopts by reference, the changes described in the following paragraphs will become part of the Commission's rules on HUBs.

TBPC's amendments to §111.14, relating to Subcontracts, adopted by reference in §20.5(a)(4), outline the steps to determine whether subcontracting opportunities are probable under a contract; the good faith required in developing a HUB subcontracting plan, submission, and review during contract performance; and contract compliance.

TBPC's proposed amendments to §111.27, relating to HUB Forum Program for State Agencies, adopted by reference in §20.5(a)(17) (which will be renumbered to (16) upon the repeal of subsection (a)(13)), change the requirements for advertising HUB forums, allow the forums to be offered at various locations, and administer the forums cooperatively with other agencies. TBPC published this proposal in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7583). In this proposal, the Commission has stated a November 10, 2004, effective date for this TBPC amendment, based on the likely schedule for TBPC to act on the proposal. The Commission intends to state the actual effective date of TBPC's action upon adoption of the proposed amendment of subsection (a)(16).

TBPC proposed the repeal of §111.23, relating to Graduation Procedures, because the process no longer served its intended purpose. This proposal was published in the July 9, 2004, issue of the *Texas Register* (29 TexReg 6475). TBPC's repeal of

1 Texas Administrative Code §111.23 would be reflected in the deletion of current subsection (a)(13) and the renumbering of subsequent paragraphs in subsection (a).

Rebecca Trevino, Director, Administration Division, has determined that for each year of the first five years the amendments are in effect there will be no fiscal implications to state or local governments as a result of the amendments. The public benefit anticipated as a result of the amendments will be the continued encouragement by the Railroad Commission of the use of historically underutilized businesses when procuring goods and services through race-, ethnic-, and gender-neutral means. There is no anticipated economic cost for small businesses, micro-businesses, or individuals who will be required to comply with the amendments.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.state.tx.us/rules/commentform.html](http://www.rrc.state.tx.us/rules/commentform.html); or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Kellie Martinec at (512) 475-1295. The status of Commission rulemakings in progress is available at [www.rrc.state.tx.us/rules/proposed.html](http://www.rrc.state.tx.us/rules/proposed.html).

The Commission proposes the amendments under Texas Government Code, §2161.003, which requires the Commission to adopt the rules of the Texas Building and Procurement Commission promulgated under Texas Government Code, §2161.002, as the Commission's own rules; and Texas Civil Statutes, Article 6447, which authorizes the commissioners to make all rules necessary for their government and proceedings.

Statutory authority: Texas Government Code, §2161.003, and Chapters 2155, 2158, 2161, 2162, 2166, 2252, and 2254; and Texas Civil Statutes, Article 6447.

Cross-reference to statute: Texas Government Code, §2161.003, and Texas Civil Statutes, Article 6447.

Issued in Austin, Texas on September 21, 2004.

##### §20.5. *Historically Underutilized Businesses.*

(a) The Commission adopts by reference the rules of the Texas Building and Procurement Commission in 1 TAC Chapter 111, Subchapter B, concerning historically underutilized business program, as effective on the following dates:

- (1) §111.11, Policy and Purpose, amended effective May 5, 2003;
- (2) §111.12, Definitions, amended effective May 5, 2003;
- (3) §111.13, Annual Procurement Utilization Goals, amended effective April 19, 2000;
- (4) §111.14, Subcontracts, adopted effective September 1, 2004 [~~May 8, 2002~~];
- (5) §111.15, Agency Planning Responsibilities, amended effective February 16, 2000;
- (6) §111.16, State Agency Reporting Requirements, amended effective June 13, 2000;
- (7) §111.17, Certification Process, amended effective May 5, 2003;

- (8) §111.18, Protests, adopted effective October 4, 1995;
- (9) §111.19, Recertification, amended ~~adopted~~ effective May 5, 2003;
- (10) §111.20, Revocation, amended effective May 5, 2003;
- (11) §111.21, Certification and Compliance Reviews, amended effective December 7, 1997;
- (12) §111.22, Texas Historically Underutilized Business Certification Directory, amended effective February 16, 2000;
- ~~(13) §111.23~~ amended effective May 5, 2003;]
- (13) ~~[(14)]~~ §111.24, Program Review, amended effective February 16, 2000;
- (14) ~~[(15)]~~ §111.25, Memorandum of Understanding between the Texas Department of Economic Development and the Texas Building and Procurement Commission, adopted effective May 5, 2003;
- (15) ~~[(16)]~~ §111.26, HUB Coordinator Responsibilities, adopted effective April 19, 2000;
- (16) ~~[(17)]~~ §111.27, HUB Forum Program for State Agencies, amended ~~adopted~~ effective November 10, 2004 ~~[April 19, 2000]~~; and
- (17) ~~[(18)]~~ §111.28, Mentor Protege Program, amended ~~adopted~~ effective May 8, 2002.

(b) Copies of the rule are filed in the Railroad Commission's Administration Division, located at the Commission's offices at 1701 North Congress, 9th floor, Austin, Texas 78701, and at all Commission district offices.

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 September 21, 2004.

TRD-200405815  
Mary Ross McDonald  
Managing Director

Railroad Commission of Texas  
Earliest possible date of adoption: November 7, 2004  
For further information, please call: (512) 475-1295



## SUBCHAPTER B. ACCESS TO AND CHARGES FOR RECORDS

The Railroad Commission of Texas (Commission) proposes the repeal of §§20.101, 20.103, 20.104, 20.105, 20.110, 20.111, 20.114, 20.115, and 20.120, relating to Charges for Commission Records; Information in an Electronic or Magnetic Medium; Requests for Information That Require Programming or Manipulation of Data; Charges for Providing Copies of Public Information; Inspection of Paper Records Where Copies Are Not Requested; Inspection of Electronic Record If Copy Not Requested; Information Excepted from Disclosure; Estimates and Waivers of Public Information Charges; and Charge Schedule, and proposes new §20.101, relating to Access to and Charges for Commission Records.

The Commission proposes the repeals and new rule pursuant to the Texas Building and Procurement Commission's (TBPC's) rules regarding charges for copies of public information. The proposed new rule adopts by reference the rules of the TBPC in 1 Texas Administrative Code, §§111.61-111.71, relating to the cost of copies of public information, and lists the most recent effective date for each TBPC rule.

Rebecca Trevino, Director, Administration Division, has determined that for each year of the first five years the repeals and new rule are in effect there will be no fiscal implications to state or local governments as a result of the repeals and new rule. The public benefit anticipated as a result of the repeals and new rule will be that the Commission's rules will accurately state the basis on which the Commission charges for copies of public information. There is no anticipated economic cost for small businesses, micro-businesses, or individuals who will be required to comply with the repeals and new rule. The Commission has been complying with the requirements imposed by 1 Texas Administrative Code, §§111.61-111.71; therefore, the formal adoption by reference will not represent a change in agency practices.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.state.tx.us/rules/commentform.html](http://www.rrc.state.tx.us/rules/commentform.html); or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Kellie Martinec at (512) 475-1295. The status of Commission rulemakings in progress is available at [www.rrc.state.tx.us/rules/proposed.html](http://www.rrc.state.tx.us/rules/proposed.html).

### 16 TAC §§20.101, 20.103 - 20.105, 20.110, 20.111, 20.114, 20.115, 20.120

*(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Commission proposes the repeals under Texas Government Code, §2161.003, which requires the Commission to adopt the rules of the Texas Building and Procurement Commission promulgated under Texas Government Code, §2161.002, as the Commission's own rules; and Texas Civil Statutes, Article 6447, which authorizes the commissioners to make all rules necessary for their government and proceedings.

Statutory authority: Texas Government Code, §2161.003, and Chapters 2155, 2158, 2161, 2162, 2166, 2252, and 2254; and Texas Civil Statutes, Article 6447.

Cross-reference to statute: Texas Government Code, §2161.003; and Texas Civil Statutes, Article 6447.

Issued in Austin, Texas, on September 21, 2004.

§20.101. *Charges for Commission Records.*

§20.103. *Information in an Electronic or Magnetic Medium.*

§20.104. *Requests for Information That Require Programming or Manipulation of Data.*

§20.105. *Charges for Providing Copies of Public Information.*

§20.110. *Inspection of Paper Records Where Copies Are Not Requested.*

- §20.111. *Inspection of Electronic Record If Copy Not Requested.*
- §20.114. *Information Excepted from Disclosure.*
- §20.115. *Estimates and Waivers of Public Information Charges.*
- §20.120. *Charge Schedule.*

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 September 21, 2004.

TRD-200405816  
 Mary Ross McDonald  
 Managing Director  
 Railroad Commission of Texas  
 Earliest possible date of adoption: November 7, 2004  
 For further information, please call: (512) 475-1295



**16 TAC §20.101**

The Commission proposes the new rule under Texas Government Code, §2161.003, which requires the Commission to adopt the rules of the Texas Building and Procurement Commission promulgated under Texas Government Code, §2161.002, as the Commission's own rules; and Texas Civil Statutes, Article 6447, which authorizes the commissioners to make all rules necessary for their government and proceedings.

Statutory authority: Texas Government Code, §2161.003, and Chapters 2155, 2158, 2161, 2162, 2166, 2252, and 2254; and Texas Civil Statutes, Article 6447.

Cross-reference to statute: Texas Government Code, §2161.003; and Texas Civil Statutes, Article 6447.

Issued in Austin, Texas, on September 21, 2004.

§20.101. Access to and Charges for Commission Records.

(a) The Commission adopts by reference the rules of the Texas Building and Procurement Commission in 1 TAC Chapter 111, Subchapter C, concerning cost of copies of public information, as effective on the following dates:

- (1) §111.61, Purpose, amended effective February 11, 2004;
- (2) §111.62, Definitions, amended effective February 11, 2004;
- (3) §111.63, Charges for Providing Copies of Public Information, amended effective February 11, 2004;
- (4) §111.64, Requesting an Exemption, amended effective January 16, 2003;
- (5) §111.65, Access to Information Where Copies Are Not Requested, amended effective February 11, 2004;
- (6) §111.66, Format for Copies of Public Information, adopted effective September 18, 1996;
- (7) §111.67, Estimates and Waivers of Public Information Charges, amended effective February 11, 2004;
- (8) §111.68, Processing Complaints of Overcharges, amended effective February 11, 2004;
- (9) §111.69, Examples of Charges for Copies of Public Information, amended effective February 11, 2004;

(10) §111.70, The Texas Building and Procurement Commission Charge Schedule, amended effective February 11, 2004; and

(11) §111.71, Informing the Public of Basic Rights and Responsibilities under the Public Information Act, amended effective February 11, 2004.

(b) Copies of the rule are filed in the Railroad Commission's Administration Division, located at the Commission's offices at 1701 North Congress, 9th floor, Austin, Texas 78701, and at all Commission district offices.

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 September 21, 2004.

TRD-200405817  
 Mary Ross McDonald  
 Managing Director  
 Railroad Commission of Texas  
 Earliest possible date of adoption: November 7, 2004  
 For further information, please call: (512) 475-1295



**TITLE 22. EXAMINING BOARDS**

**PART 10. TEXAS FUNERAL SERVICE COMMISSION**

**CHAPTER 205. CEMETERIES AND CREMATORIES**

**22 TAC §205.6**

The Texas Funeral Service Commission proposes new Title 22, Texas Administrative Code, Chapter 205, §205.6, concerning Contracts for Direct Cremation Services.

The proposed new §205.6 reflects the analysis of the Attorney General's Opinion No. GA-0218, issued July 19, 2004, concluding that an authorizing agent may contract directly for cremation services if the crematory is also licensed as a funeral establishment or if the authorizing agent receives written authorization from either a justice of the peace or medical examiner.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the new section is in effect, there will be no fiscal implication for the state or local governments as a result of enforcing or administering the proposed section.

Mr. Robbins has further determined that for each year of the first five-year period the new section is in effect, there will be no effect on large, small or micro-businesses. The public benefit will be the understanding of when an authorizing agent is authorized to enter in to a contract for direct cremation services. The anticipated economic costs to persons who are required to comply with this section will be no more nor less than the costs to the individuals before this new section becomes effective and there is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capital Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robins@tfsc.state.tx.us.



The new section is proposed under Texas Health and Safety Code, §716.002. The commission interprets §716.002 as authorizing it to adopt rules as necessary to administer Health and Safety Code, Chapter 716 and Texas Occupations Code Chapter 651 to govern the cremation of human remains.

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

§205.6. Contracts for Direct Cremation Services.

An authorizing agent authorized to dispose of the remains of a deceased individual may contract directly for cremation services if the crematory is also licensed as a funeral establishment or if the authorizing agent receives written authorization from either a justice of the peace or medical examiner of the county in which the death occurred.

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 September 24, 2004.

TRD-200405888

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 936-2466



## CHAPTER 209. ETHICAL STANDARDS FOR PERSONS LICENSED BY THE COMMISSION

### 22 TAC §209.1

The Texas Funeral Service Commission (Commission) proposes new Chapter 209, §209.1, concerning Ethical Standards. The Commission proposed new Chapter 209, §209.1, concerning Basis for Standards in the June 25, 2004, issue of the *Texas Register* (29 TexReg 6028). After receipt of comments and upon further consideration, the Commission withdraws the June 25, 2004, proposal and submits the following new proposal for Chapter 209, §209.1.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the new section is in effect, there will be no fiscal implication for the state or local governments as a result of enforcing or administering the proposed section.

The new section is proposed in accordance with the requirements of Section 6 of House Bill 1538, 78th Legislature, Regular Session, requiring the adoption of ethical standards.

Mr. Robbins has further determined that for each year of the first five-year period the new section is in effect, there will be no effect on large, small or micro-businesses. The public benefit for the consumers will be that they are treated with honesty and respect when licensees attain these ethical standards. The anticipated economic costs to persons who are required to comply with this section will be no more nor less than the costs to the individuals before this new section becomes effective and there is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capital Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The new section is proposed under Texas Occupations Code, §651.151(a) and §651.152. The Commission interprets Texas Occupations Code §651.151(a) as requiring it to adopt ethics standards and §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, article, or codes are affected by the proposal.

§209.1. Basis for Standards.

(a) The individuals licensed by the Commission serve the consumer during one of the most demanding periods that a consumer will experience. Many services provided require knowledge in the mortuary arts and sciences which most bereaved families do not have. Licensees should strive to attain the highest degree of ethical and professional conduct using honesty, candor and respect.

(b) Applicability. These policies are intended to set forth ethical precepts to which individuals licensed by the Commission should aspire to achieve. These standards are not intended to be used by parties to litigation over whether or not they have been observed. State and federal law and rules dictate the minimum standards to which each individual licensee must conform. These policies are adopted to set a higher goal and standard of ethics and professionalism which individual licensees should strive to attain, because it is right and just.

(c) Competency. The licensee shall be knowledgeable of and adhere to the laws, the rules, applicable codes, and all procedures established by the Commission for licensees. It is the obligation of the licensee to exercise reasonable judgment and skill in the performance of all duties and work performed as a licensee.

(d) Integrity.

(1) A licensee shall be honest and trustworthy in the performance of all duties and work performed as a licensee and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission.

(2) A licensee shall refrain from engaging in acts or practices that constitute threats, coercion, or extortion.

(3) A licensee shall respect a consumer's right of personal choice and decisions with regard to making arrangements.

(e) Interest. The primary interest of the licensee is to ensure compliance with the Act, the rules, and all applicable codes. The licensee's position, in this respect, should be clear to all parties concerned while in the performance of all duties and work performed as a licensee.

(f) Specific Rules of Conduct.

(1) A licensee shall provide services to client families without regard to religion, race, color, national origin, sex, sexual orientation or disability.

(2) A licensee shall provide to consumers and prospective consumers, where applicable, all statutorily required documentation, pricing information, and any other information concerning funerals, cremations, burials, pricing, merchandise, and services, including a consumer brochure and retail price list, in a manner which is neither unfair nor deceptive.

(3) A licensee shall protect from disclosure confidential information pertaining to the deceased or the family of the deceased.

(4) A licensee shall account properly for and remit any monies, documents, or personal property that belongs to others that comes into the licensees' possession.

(5) A licensee shall not participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting

or having as its purpose the evasion of any provision of the laws, the rules, or the standards adopted by the Commission.

(6) A licensee shall not knowingly furnish inaccurate, deceitful, or misleading information to the Commission or a consumer while performing as a licensee.

(7) A licensee shall not engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing as a licensee.

(8) A licensee shall not solicit business or offer inducement to secure or attempt to secure business except where authorized by law.

(9) A licensee shall not violate any statute, ordinance, or regulation affecting the handling, custody, care or transportation of decedent.

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 September 24, 2004.

TRD-200405889

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 936-2466



## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

#### SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

##### 22 TAC §523.130

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.130, concerning Board Rules and Ethics Course.

The amendment will exempt from the ethics course requirements CPAs who do not live in Texas, have no Texas clients and are current with the ethics requirement of their residence state.

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

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

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

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

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result

of adoption of the proposed amendment will be that this amendment will clarify non-resident exemption.

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

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

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment addresses an exemption from a requirement.

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

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

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

*§523.130. Board Rules and Ethics Course.*

(a) An individual applying for certification or registration must complete a board-approved four hour ethics course designed to thoroughly familiarize the applicant with the board's Rules of Professional Conduct no more than six months prior to submission of the application. Proof of completion of this course must be submitted with the application.

(b) Prior to January 1, 2005, every licensee must take a board approved two hour ethics course on the board's Rules of Professional Conduct every three years. Licensees shall report completion of the course on the annual license renewal notice at least every third year.

(c) Beginning on January 1, 2005, every licensee must take a four hour ethics course that has been approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content after January 1, 2005) every two years. Licensees shall report completion of the course on the annual license renewal notice at least every second year.

(d) For the license renewal due in 2007, every certificate or registration holder must have taken and reported a 4-hour ethics course approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content after January 1, 2005). To transition from the 3-year reporting cycle contained in subsection (b) of this section to the 2-year reporting cycle contained in subsection

(c) of this section, those certificate or registration holders that would have been required to report the taking of an ethics course for their license renewal due in 2005 under the 3-year cycle must continue to report the satisfaction of this requirement for their license renewal in 2005; however, either a 2-hour ethics course approved by the board pursuant to §523.133 of this title (relating to Course Content and Board Approval) or a 4-hour ethics course approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content after January 1, 2005) will be accepted in satisfaction of this requirement. Those certificate or registration holders that would have been required to report the taking of an ethics course for their license renewal due in 2006 under the 3-year cycle must report the satisfaction of this requirement for their license renewal in 2006; however, that course must be a 4-hour ethics course approved by the board pursuant to §523.131 of this title.

(e) A licensee granted retired, permanent disability, or other exempt status is not required to complete the ethics course during the licensee's exempt status. When the exempt status is no longer applicable, the individual must complete an ethics course approved by the board and report it on the license renewal notice if due.

(f) A certificate or registration holder [~~who resides in the state of Texas~~] must take the ethics course in a live instructor format or in an interactive computer-based format as defined in §523.102(b)(5) of this title (relating to CPE Purpose and Definitions).

(g) A certificate or registration holder who does not reside in the state of Texas, who has no clients within this state, and who is current with the ethics course requirements of his state of residence is not required to take the ethics course mandated by this section[~~must take the course in either a live instructor format or a computer-based interactive format as defined in §523.102(b)(5) of this title (relating to CPE Purpose and Definitions) or obtain a written exemption from the board~~].

(h) Interpretive Comment: Only a 4-hour course will be board approved after January 1, 2005. If a licensee needs to report an ethics course in 2005, he may take a board approved 2-hour course prior to January 1, 2005; however, he will still need to take a board approved 4-hour ethics course to report no later than his 2007 license renewal date. For example:

Figure: 22 TAC §523.130(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 September 22, 2004.

TRD-200405864

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 2004

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



## SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

### 22 TAC §523.144

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §523.144, concerning Board Contracted CPE Sponsors after December 31, 2005.

The proposed repeal will remove a rule that is going to be re-written.

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

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

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

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

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

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

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

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on October 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

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

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

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

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

§523.144. *Board Contracted CPE Sponsors after December 31, 2005.*

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 September 22, 2004.

TRD-200405865

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 2004

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



## 22 TAC §523.144

The Texas State Board of Public Accountancy (Board) proposes new §523.144, concerning Board Registered CPE Sponsors after January 1, 2005.

The new §523.144 will create the Board's CPE Sponsor Program by incorporating elements of former §523.144, with some exceptions.

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

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

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

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be an increase of about \$45,000 per year.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be that there will be in place a CPE Sponsor program that allows the Board to monitor the quality of its CPE Sponsors.

The probable economic cost to persons required to comply with the new rule will vary according to the number of CPE courses they decide to offer as indicated on the graphic attached to §523.144.

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

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on October 29, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because small businesses are not required to offer CPE courses. For those that do decide to offer CPE courses, they may select the

number of courses they wish to offer, which determines the economic effect.

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

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the Board to promulgate rules regarding peer review.

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

§523.144. Board Registered CPE Sponsors after January 1, 2005.

(a) The board may enter into an agreement with any sponsor of CPE programs to become a board registered CPE sponsor where the sponsor, in the opinion of the board, demonstrates that it will comply with its obligations to the board and that its programs will conform to the board's standards as outlined in:

(1) §523.115 of this title (relating to Credits for Instructors and Discussion Leaders);

(2) §523.130 of this title (relating to Board Rules and Ethics Course), (if applicable);

(3) §523.140 of this title (relating to Program Standards);

(4) §523.141 of this title (relating to Evaluation); and

(5) §523.142 of this title (relating to Program Time Credit Measurement).

(b) The board will also require that each organization applying to become a board registered CPE sponsor agree that in the conduct of its business it will:

(1) Not commit fraud, deceit or engage in fiscal dishonesty of any kind;

(2) Not misrepresent facts or make false or misleading statements;

(3) Not make false statements to the board or to the board's agents; and

(4) Comply with the laws of the United States and the State of Texas.

(c) Each organization applying to become a board registered CPE sponsor must submit an application on registration forms provided by the board. The application must be complete in all respects and must be accompanied with payment of a non-refundable registration fee unless the sponsor is exempt from paying the fee in accordance with this rule. Sponsors that offer regularly scheduled course titles that are at least one hour and up to four hours in length may accumulate these course titles into an eight-hour course block when determining fees. A maximum of 24 hours may be accumulated into three eight-hour course blocks. Refer to interpretative comment in subsection (j) of this section

for explanation. The registration fee is based on the number of course titles offered and is identified in the following chart:  
Figure: 22 TAC §523.144(c)

(d) To qualify for an exemption from the annual registration fee a sponsor must be:

(1) a state, federal or other governmental agency that provides CPE for its employees and others at no charge;

(2) a sponsor registered and in good standing with NASBA's National Registry of CPE Sponsors;

(3) an institution of higher education whose courses are accepted for transfer credit by the reporting institution in the State of Texas. Other than courses acceptable for transfer credit, continuing education does not qualify for the exemption whether offered through an institute of higher education or through an educational foundation operating within such an institution; or

(4) subject to the Board's sole discretion, a Sponsor's courses that are subject to review by another entity may apply for an exemption from fees.

(e) Sponsors that are exempt from paying the registration fee must register with the board.

(f) To implement the program initially, sponsors previously registered with the board will be assigned an initial registration term based on the month of their current registration. The board will not prorate the registration payment for an organization for less than one year. Upon renewal in the second and succeeding years, the registration amount may be increased to cover the costs of review of sponsors and individual courses.

(g) Board staff will review each application and notify the sponsor of its acceptance or rejection. Accepted sponsors will be assigned a sponsor number and can represent that they are a board registered CPE sponsor. An acceptance in any given year shall not bind the board to accept a sponsor in any future year.

(h) After the registration has been accepted, the board, in its sole and exclusive discretion, may determine that a registered sponsor is not in compliance with the registration requirements, CPE standards or applicable board rules. The board will provide the registered sponsor reasonable notice it may make such a determination and shall provide the registered sponsor a reasonable opportunity to respond to the board. If the board determines the sponsor is not in compliance, then the board may request that the sponsor make changes to come into compliance or the board may terminate the sponsor's registration. The registration fee shall not be prorated or refunded if the registration is terminated.

(i) CPE sponsor registrations are renewable annually by submitting a renewal application and paying the registration fee.

(j) Interpretive Comment: In applying the fee structure to courses, it is deemed that small practice groups and sponsors that provide lectures and seminars on a regular basis would be allowed to accumulate course titles that are at least one hour and up to four hours in length into one eight-hour course block. The maximum number of groupings of courses would be limited to three eight-hour course blocks of 24 hours of qualified courses.

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 September 22, 2004.

TRD-200405866

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 2004

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



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 10. TEXAS WATER DEVELOPMENT BOARD

#### CHAPTER 357. REGIONAL WATER PLANNING GUIDELINES

##### 31 TAC §357.5, §357.7

The Texas Water Development Board (the board) proposes amendments to 31 TAC Chapter 357, §357.5 and §357.7 concerning Regional Water Planning Guidelines.

The 78th Texas Legislature, through House Bill 1378, amended Texas Water Code §16.053(d) and (e) to remove the requirement for certain persons and/or entities to report information concerning water pipelines and other facilities that can be used for water conveyance to the board and that regional water plans identify such pipeline information. The 78th Texas Legislature also amended Texas Water Code §16.0121 and §16.053(j) pursuant to House Bill 3338 to require retail public utilities that provide potable water to conduct water loss audits and file the results with the board at least every five years. To comply with these statutory revisions, the board, simultaneously with these proposed amendments to Chapter 357, has proposed a repeal of the current §358.6, Pipeline and Facility Reports and, in its place, the board proposes a new §358.6, Water Loss Audits, to implement the new water loss audits program. The board proposes amendments to §357.5, Guidelines for Development of Regional Water Plans, by adding a new proposed §357.5(k)(1)(C) to require regional water planning groups to consider the information compiled pursuant to the proposed new §358.6, Water Loss Audits, when developing a regional water plan consistent with the requirements of Water Code §16.0121(f). This information will be useful for regional water planning groups to assess system water loss in their area and to aid in the development of water planning and conservation efforts.

The board proposes amendments to §357.7, Regional Water Plan Development, to reflect the removal of the statutory requirements to consider pipeline and facility reports, and the new statutory requirement to consider water loss audits. The board proposes amendments to §357.7(a)(1)(M) to delete the reference to pipeline and facility reports received pursuant to §358.6 since there is no longer statutory authority for this requirement. As noted above, the board has proposed a new §358.6, Water Loss Audits, to implement a new program requiring retail public utilities providing potable water to perform and file a water loss audit form with the board. The board proposes a new §357.7(a)(1)(M) to require that the information concerning a regional water planning area compiled pursuant to this proposed new §358.6, Water Loss Audits, be incorporated into that region's water plan. This will assure regions consider the potential for curing water losses

as a way to provide for future water sources. The board also proposes a new §357.7(a)(7)(A)(iv) to assure that regions consider as a water conservation strategy the potential for addressing issues identified in water loss audits based on information compiled by the board.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period these sections are in effect there will not be fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Callahan has also determined that for the first five years the sections, as proposed, are in effect the public benefit anticipated as a result of enforcing the sections will be to provide more thorough and comprehensive regional water plans thereby assisting in improving water conservation and planning efforts in the state. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Geoff Petrov, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to [Geoffrey.Petrov@twdb.state.tx.us](mailto:Geoffrey.Petrov@twdb.state.tx.us) or by fax at (512) 463-5580.

The amendments are proposed under the authority of the Texas Water Code §§6.101, 16.012, 16.0121 and 16.053.

Cross reference to statute: Water Code, Chapter 16, Subchapters B and C.

§357.5. *Guidelines for Development of Regional Water Plans.*

(a) - (j) (No change.)

(k) Existing regional water planning efforts. In developing a regional water plan, the regional water planning group shall consider the following:

(1) existing plans and information, including:

- (A) water conservation plans;
- (B) drought contingency plans;

(C) information compiled by the board from water loss audits performed by retail public utilities pursuant to §358.6 of this title (relating to Water Loss Audits);

(D) [(E)] certified groundwater conservation district management plans;

(E) [(D)] publicly available plans of major agricultural, municipal, manufacturing and commercial water users;

(F) [(E)] water management plans;

(G) [(F)] water availability requirements promulgated by a county commissioners court in accordance with Texas Water Code, §35.019; and

(H) [(G)] any other information available from existing local or regional water planning studies; and

(2) existing programs and goals, including:

- (A) the state Clean Rivers Program;
- (B) the federal Clean Water Act; and

(C) other planning goals including, but not limited to, regionalization of water and wastewater services, where appropriate.

(l) (No change.)

§357.7. *Regional Water Plan Development.*

(a) Regional water plan development shall include the following:

(1) description of the regional water planning area including:

- (A) wholesale water providers,
- (B) current water use,
- (C) identified water quality problems,
- (D) sources of groundwater and surface water including major springs that are important for water supply or natural resource protection purposes,
- (E) major demand centers,
- (F) agricultural and natural resources,
- (G) social and economic aspects of the regional water planning area including information on current population and primary economic activities including businesses dependent on natural water resources,

(H) assessment of current preparations for drought within the regional water planning area,

- (I) summary of existing regional water plans,
- (J) summary of recommendations in state water plan,
- (K) summary of local water plans,

(L) any identified threats to the agricultural and natural resources of the regional water planning area due to water quantity problems or water quality problems related to water supply, and

(M) information compiled by the board from water loss audits performed by retail public utilities pursuant to §358.6 of this title (relating to Water Loss Audits);

~~[(M) information on water pipelines and other facilities that the regional water planning group determines are or could be used for water conveyance, including, but not limited to currently used and abandoned oil, gas, and water pipelines. This information will be developed from data provided by the board from its pipeline and facility reports received pursuant to §358.6 of this title (relating to Pipeline and Facility Reports); data available from the Railroad Commission of Texas; and any other data gathered by the regional water planning groups;]~~

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

(7) evaluation of all water management strategies the regional water planning group determines to be potentially feasible, including:

(A) water conservation practices. The executive administrator shall provide technical assistance to the regional water planning groups on water conservation practices. The regional water planning group must consider water conservation practices for each need identified in paragraph (4) of this subsection.

(i) - (iii) (No change.)

(iv) The regional water planning group shall consider strategies to address any issues identified in the information compiled by the board from the water loss audits performed by retail public utilities pursuant to §358.6 of this title (relating to Water Loss Audits);

(B) - (G) (No change.)

(8) - (14) (No change.)

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

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

Filed with the Office of the Secretary of State on September 22, 2004.

TRD-200405843

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: November 17, 2004

For further information, please call: (512) 475-2052



## CHAPTER 358. STATE WATER PLANNING GUIDELINES

The Texas Water Development Board (the board) proposes amendments to 31 TAC Chapter 358, §358.2, §358.3, §358.5, repeal of §358.6 and proposes a new §358.6 concerning the State Water Planning Guidelines.

The board proposes amendment to §358.2, Definitions, by adding proposed new §358.2(3). The existing definitions will be renumbered accordingly to accommodate this new proposed subsection. The board proposes new §358.2(3) to define "commission" as the Texas Commission on Environmental Quality. The 77th Texas Legislature renamed the Texas Natural Resource Conservation Commission the Texas Commission on Environmental Quality. Adding this definition will recognize that name change and eliminate possible confusion in the board's rules.

The board proposes amendment to §358.3, Guidelines, by adding proposed new §358.3(b)(5) - (21). This amendment is made to correct an error. Section 358.3(b)(5) - (21) existed in the same form as proposed herein prior to December 28, 2001. In the course of making an amendment to §358.3(a), §358.3(b)(5) - (21) was inadvertently omitted from the new §358.3, Guidelines, as published in the *Texas Register*. See 26 TexReg 11028-11029 (2001). This amendment will correct the error by restoring §358.3(b)(5) - (21). These proposed paragraphs contain the guiding principles for the development of the state water plan and regional water plans.

The board proposes amendments to §358.5, Groundwater and Surface Water Use Surveys, corresponding to amendments to Texas Water Code §16.012 made pursuant to House Bill 1378 from the 78th Texas Legislature. Section 358.5(a) is proposed to be amended to specify that the requirement to submit annual water use surveys is limited to persons and/or entities using groundwater and surface water for municipal, industrial, power generation, or mining purposes. Section 358.5(b) is amended to delete the exception from disclosure under the Texas Public Information Act, Texas Government Code, Chapter 552, of groundwater and surface water use survey forms returned by non-governmental entities. Previously, this information was protected by Water Code §16.012 from disclosure unless the person submitting the survey authorized the board in writing to release the survey form to the public. The removal of this exception in rule reflects the similar removal from statute.

The board proposes to repeal the current §358.6, Pipeline and Facility Reports, due to amendments to Texas Water Code §16.053(d) and (e) made pursuant to House Bill 1378 from the 78th Texas Legislature which removed the requirement for certain persons and/or entities to report information concerning water pipelines and other facilities that can be used for water conveyance to the board. In its place, the board proposes new §358.6, Water Loss Audits, to implement a new program requiring retail public utilities providing potable water to perform and file a water loss audit with the board. This new program is required by House Bill 3338, which was passed by the 78th Texas Legislature and added a new §16.0121 to the Texas Water Code and amended Texas Water Code §16.053(j). Proposed new §358.6(a) establishes the requirements for the program. The board will develop guidelines and methodologies for retail public utilities to use in performing the water loss audit. At least one year prior to the required filing, the board will provide these guidelines and methodologies to each retail public utility along with a water loss audit form to be completed and returned by the retail public utility. Retail public utilities must perform the water loss audit and file the information with the board on the prescribed form at least every five years. The first water loss audit form will be due on March 31, 2006. The executive administrator will compile the information included in the water loss audits by category of retail public utility and by regional water planning area. This information will be used by the regional water planning groups in the preparation of their regional water plans, as further described in Chapter 357. Proposed new §358.6(b) provides for enforcement of the water loss audit requirement. The executive administrator will inform the utility in writing if any deficiencies are discovered. The utility will then have 30 days from the date of executive administrator's notification to correct the deficiencies and file a complete water loss audit form with the executive administrator. A retail public utility that fails to submit a water loss audit form by the deadline or that fails to correct an incomplete water loss audit form within the 30-day time period will be ineligible for financial assistance from the board for water supply projects under Texas Water Code, Chapter 15, Subchapters C, D, E, F, J, O, and P; Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, I, K, and L. The retail public utility will remain ineligible for financial assistance until a complete water loss audit form has been filed with and accepted by the executive administrator.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period these sections, repeal and new section are in effect there will not be fiscal implications on state and local government as a result of enforcement and administration of these sections.

Ms. Callahan has also determined that for the first five years these sections, repeal and new section, as proposed, are in effect the public benefit anticipated as a result of enforcing the sections will be to (1) make retail public utilities aware of system water losses, (2) place a greater emphasis on water conservation among potable water suppliers and (3) provide additional information to regional water planning groups thereby assisting in improving water management and conservation efforts in the state. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the sections, repeal and new section as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Geoff Petrov, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas

78711-3231, by e-mail to Geoffrey.Petrov@twdb.state.tx.us or by fax at (512) 463-5580.

## SUBCHAPTER A. STATE WATER PLAN DEVELOPMENT

### 31 TAC §358.2, §358.3

The amendments are proposed under the authority of the Texas Water Code §§6.101, 16.012, 16.0121 and 16.053.

Cross reference to statute: Water Code, Chapter 16, Subchapters B and C.

#### §358.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the applicable provisions of the Texas Water Code, Chapter 16, and not defined here shall have the meanings provided in Chapter 16.

(1) Approved regional water plan--A regional water plan or amendment to an approved regional water plan approved by the board under the Texas Water Code, §16.053 and Chapter 357 of this title (relating to Regional Water Planning Guidelines).

(2) Board--The Texas Water Development Board.

(3) Commission--Texas Commission on Environmental Quality.

(4) [(3)] Long-term water needs--Those needs which must be met by implementation of water management strategies within the next 30 to 50 years based on federal census years (2040, 2050, etc.).

(5) [(4)] Near-term water needs--Those needs which must be met by implementation of water management strategies within the next 30 years based on federal census years (2000, 2010, 2020, 2030, etc.).

(6) [(5)] Regional water plan--Plan or amendment to an adopted or approved regional water plan developed by a regional water planning group for a regional water planning area pursuant to the Texas Water Code, §16.053 and Chapter 357 of this title (relating to Regional Water Planning Guidelines).

(7) [(6)] Regional water planning area--Area designated pursuant to the Texas Water Code, §16.053 and §357.3 of this title (relating to Designation of Regional Water Planning Areas).

(8) [(7)] Regional water planning group--Group designated pursuant to the Texas Water Code, §16.053 and §357.4 of this title (relating to Designation of Regional Water Planning Groups) to develop regional water plans.

(9) [(8)] River and stream segments of unique ecological value--Those river or stream segments that may be identified by the board in coordination with the Texas Parks and Wildlife Department and the commission [Texas Natural Resource Conservation Commission] or identified in an approved regional water plan based on the following criteria:

(A) biological function--stream segments which display significant overall habitat value including both quantity and quality considering the degree of biodiversity, age, and uniqueness observed and including terrestrial, wetland, aquatic, or estuarine habitats;

(B) hydrologic function--stream segments which are fringed by habitats that perform valuable hydrologic functions relating to water quality, flood attenuation, flow stabilization, or groundwater recharge and discharge;

(C) riparian conservation areas--stream segments which are fringed by significant areas in public ownership including state and federal refuges, wildlife management areas, preserves, parks, mitigation areas, or other areas held by governmental organizations for conservation purposes, or stream segments which are fringed by other areas managed for conservation purposes under a governmentally approved conservation plan;

(D) high water quality/exceptional aquatic life/high aesthetic value--stream segments and spring resources that are significant due to unique or critical habitats and exceptional aquatic life uses dependent on or associated with high water quality; or

(E) threatened or endangered species/unique communities--sites along streams where water development projects would have significant detrimental effects on state or federally listed threatened and endangered species; and sites along streams significant due to the presence of unique, exemplary, or unusually extensive natural communities.

(10) [(9)] Site of unique value for construction of reservoirs--Those sites identified by the board in coordination with the Texas Parks and Wildlife Department and the commission [Texas Natural Resource Conservation Commission] or identified in an approved regional water plan where:

(A) site-specific reservoir development is recommended as a specific water management strategy or in an alternative long-term scenario in an adopted regional water plan; or

(B) the location, hydrologic, geologic, topographic, water availability, water quality, environmental, cultural, and current development characteristics, or other pertinent factors make the site uniquely suited for reservoir development to provide water supply for:

(i) the current planning period; or

(ii) where it might reasonably be needed to meet needs beyond the 50-year planning period.

(11) [(10)] State water plan--A comprehensive statewide water plan adopted by the board covering a 50-year planning period, based on federal census years, that incorporates approved regional water plans and that provides for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions, in order that sufficient water will be available at a reasonable cost to ensure public health, safety and welfare, further economic development, and protect the agricultural and natural resources of the entire state.

(12) [(11)] Water management scenarios--A combination of various water management strategies.

(13) [(12)] Water management strategies--Any strategy for the management of water resources to provide for identified needs including water conservation and drought response planning including water demand management, reuse of wastewater, expanded use or acquisition of existing supplies including systems optimization, aquifer storage and recovery, conjunctive use of resources, reallocation of reservoir storage to new uses, voluntary redistribution of water including water marketing, regional water bank, sales, leases, options, subordination agreements, and financing agreements, subordination of existing water rights through voluntary agreements, enhancements of yields of existing sources, control of naturally occurring chlorides, interbasin transfers, new supply development including construction and improvement of surface water resources, brush control, precipitation enhancement, desalinization, and water supply that could be made available by cancellation of water rights based on data provided by the commission [Texas Natural Resource Conservation Commission], and other measures.



§358.3. *Guidelines.*

(a) The executive administrator shall prepare, develop, and formulate the state water plan and the board shall adopt a state water plan no later than January 5, 2002, and before the end of each successive five-year period after that date. The executive administrator shall identify the beginning of the 50-year planning period for the state and regional water plans. The executive administrator shall incorporate into the state water plan presented to the board those regional water plans approved by the board pursuant to Chapter 357 of this title (relating to Regional Water Planning Guidelines). The board shall, not less than 30 days before adoption or amendment of the state water plan, publish notice in the Texas Register of its intent to adopt a state water plan and shall mail notice to each regional water planning group. The board shall hold a hearing, after which it may adopt a water plan or amendments thereto.

(b) Development of the state water plan and of regional water plans shall be guided by the following principles:

(1) identification of those policies and actions that may be needed to meet Texas' near- and long-term water needs and preparation for and response to drought conditions, in order that sufficient water will be available at a reasonable cost to satisfy a reasonable projected use of water to ensure public health, safety and welfare, further economic development, and protect the agricultural and natural resources of the state;

(2) decision-making that is open to and accountable to the public with decisions based on accurate, objective and reliable information with full dissemination of planning results;

(3) consideration of the effect of policies or water management strategies on the public interest of the state, water supply, and those entities involved in providing this supply throughout the entire state;

(4) consideration of all water management strategies the board determines to be potentially feasible when developing plans to meet future water needs and to respond to drought so that cost effective water management strategies which are consistent with long-term protection of the state's water resources, agricultural resources, and natural resources are considered and approved;

(5) consideration of opportunities that encourage and result in voluntary transfers of water resources, including but not limited to regional water banks, sales, leases, options, subordination agreements, and financing agreements;

(6) consideration of a balance of economic, social, aesthetic, and ecological viability;

(7) for regional water planning areas without approved regional water plans or water providers for which revised plans are not developed through the regional water planning process, the use of information from the adopted state water plan and other completed studies that are sufficient for water planning shall represent the water supply plan for that area or water provider;

(8) the orderly development, management, and conservation of water resources;

(9) the principles that all surface waters are held in trust by the state, their use is subject to rights granted and administered by the commission, and the use of surface water is governed by the prior appropriation doctrine, unless adjudicated otherwise;

(10) protection of existing water rights, water contracts, and option agreements, but the plan may evaluate potential voluntary amendments to water rights, contracts or agreements;

(11) the principle that use of groundwater in Texas is governed by the right of capture doctrine, unless such use is under the authority of a locally controlled groundwater management district;

(12) consideration of recommendations of river and stream segments of unique ecological value to the legislature for potential protection;

(13) consideration of recommendation of sites of unique value for the construction of reservoirs to the legislature for potential protection;

(14) coordination of water planning and management activities of local, regional, state, and federal agencies;

(15) designated water quality and related water uses as shown in the state water quality plan should be improved or maintained;

(16) coordination of water planning and management activities of regional water planning groups to identify common needs and issues and achieve efficient use of water supplies, including the board and the neighboring regional water planning groups, working together to identify common needs, issues, and/or problems and working together to resolve conflicts in a fair, equitable, and efficient manner;

(17) the water management strategies identified in approved regional water plans to meet near-term needs shall be described in sufficient detail to allow a state agency making a financial or regulatory decision to determine if a proposed action before the state agency is consistent with an approved regional water plan;

(18) evaluation of alternative water management strategies using environmental information resulting from site-specific studies, or in the absence of such information, using state environmental planning criteria adopted by the board for inclusion in the state water plan after coordinating with staff of the commission and the Texas Parks and Wildlife Department;

(19) consideration of environmental water needs including instream flows and bay and estuary inflows;

(20) planning consistent with all laws applicable to water use for the state and regional water planning area; and

(21) the inclusion of ongoing water development projects which have been issued a permit by the commission or a predecessor agency.

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 September 22, 2004.

TRD-200405844  
Suzanne Schwartz  
General Counsel

Texas Water Development Board  
Proposed date of adoption: November 17, 2004  
For further information, please call: (512) 475-2052



**SUBCHAPTER B. DATA COLLECTION**

**31 TAC §358.5, §358.6**

The amendments and new section are proposed under the authority of the Texas Water Code §§6.101, 16.012, 16.0121 and 16.053.

Cross reference to statute: Water Code, Chapter 16, Subchapters B and C.

§358.5. *Groundwater and Surface Water Use Surveys.*

[(a)] The executive administrator shall conduct surveys at least annually of persons and/or entities using groundwater and surface water for municipal, industrial, power generation, or mining purposes to gather data to be used for long-term water supply planning. The survey instrument will identify which responses are required and which are optional. The executive administrator will send the surveys to the appropriate recipients by first-class mail, electronic mail, or both. Recipients shall return the survey to the executive administrator within 60 days of the postmark date or electronic mail sent date. Surveys may be returned to the executive administrator electronically. The executive administrator shall determine if the survey is administratively complete. A survey is administratively complete if all required responses are provided. Incomplete surveys will be returned to the recipient, who will have 60 days from the new postmark date or electronic mail sent date to complete the items found deficient and return the survey to the executive administrator. A person or entity that fails to return their survey within 60 days or correct a survey that is not administratively complete within 60 days is ineligible for funding from board programs. Ineligibility will remain until the incomplete survey instruments are submitted to the executive administrator and determined to be administratively complete. Further, a person who fails to complete and return the survey commits an offense that is punishable as a Class C misdemeanor, pursuant to Texas Water Code §16.012(m).

[(b) Survey forms completed and returned by non-governmental entities are excepted by Texas Water Code §16.012 from release under the Texas Public Information Act, Texas Government Code, Chapter 552, unless the person completing and returning the survey authorizes the board in writing to release the survey form pursuant to the Texas Public Information Act.]

§358.6. *Water Loss Audits.*

(a) Every five years, a retail public utility, as defined by Texas Water Code §13.002, which provides potable water shall perform a water loss audit and file with the executive administrator a water loss audit form computing the utility's most recent annual system water loss. The water loss audit shall be performed in accordance with methodologies developed by the board based on the population served by the utility and taking into consideration the financial feasibility of performing the water loss audit, population density in the service area, the retail public utility's source of water supply, the mean income of the service population, and any other factors determined by the board. At least one year prior to the required filing, the executive administrator will provide the necessary forms and methodologies approved by the board to the retail public utility via first-class mail, electronic mail, or both. Retail public utilities shall submit the water loss audit form to the executive administrator by the 31st day of March. The first water loss audit form shall be submitted no later than March 31, 2006. The water loss audit form may be submitted electronically. The executive administrator shall compile the information included in the water loss audits according to category of retail public utility and according to regional water planning area.

(b) The executive administrator shall determine if the water loss audit form is administratively complete. A water loss audit form is administratively complete if all required responses are provided. In the event the executive administrator determines that a retail public utility's water loss audit form is incomplete, the incomplete audit form will be returned to the utility. The retail public utility will then have 30 days

from the new postmark date or electronic mail sent date to complete the items found deficient and return a complete water loss audit form to the executive administrator. A retail public utility that fails to submit a water loss audit form or that fails to timely correct a water loss audit form that is not administratively complete is ineligible for financial assistance for water supply projects under Texas Water Code, Chapter 15, Subchapters C, D, E, F, J, O, and P; Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, I, K, and L. The retail public utility will remain ineligible for financial assistance until a complete water loss audit form has been filed with and accepted by the executive administrator.

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 September 22, 2004.

TRD-200405845

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: November 17, 2004

For further information, please call: (512) 475-2052



**31 TAC §358.6**

*(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 Water Development Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the authority of the Texas Water Code §§6.101, 16.012, and 16.053.

Cross reference to statute: Water Code, Chapter 16, Subchapters B and C.

§358.6. *Pipeline and Facility Reports.*

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 September 22, 2004.

TRD-200405846

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: November 17, 2004

For further information, please call: (512) 475-2052



**CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS**

The Texas Water Development Board (the board) proposes amendments to 31 TAC Chapter 363, §363.2 and §363.15 concerning Financial Assistance Programs. The proposed amendments incorporate recommendations from the Water Conservation Implementation Task Force (task force), more closely track the Texas Commission on Environmental Quality's

(commission) requirements for water conservation plans, and add a new requirement that water conservation plans include specific targets and goals as mandated by Texas Water Code §§6.101, 15.106, 17.125, 17.277, and 17.857 as amended by House Bill 2660. House Bill 2660 applies to both the board and the commission and these amendments were developed jointly by both agencies.

In 2003, the 78th Legislature passed House Bill 2660 and Senate Bill 1094. House Bill 2660 amended Texas Water Code §§15.106, 17.125, 17.277, and 17.857 mandating the board to require applicants for financial assistance from the board to include specific, quantified five-year and ten-year targets for water savings in their water conservation plans beginning May 1, 2005. Senate Bill 1094 created the task force. This task force is required to advise the board and commission on standardized methodology for reporting and using municipal per capita water use data. To accomplish that goal, the task force developed a definition for "municipal use in gallons per capita per day" which will be included in its report to the 79th Texas Legislature.

The board proposes amendments to §363.2. Definitions of Terms, to add proposed new §363.2(17), to include a definition for "Municipal use in gallons per capita per day." Texas Water Code §11.1271, as amended by House Bill 2660, requires targets for water savings to include goals for "municipal use in gallons per capita per day". To ensure consistency in the use of the term between the board and the commission, the board proposes to include the definition of "Municipal use in gallons per capita per day," as recommended by the task force and adopted by the commission. Subsequent definitions (17) - (19) will be renumbered (18) - (20) to accommodate this new proposed definition.

The board proposes amendments to §363.15, Required Water Conservation Plan, to ensure consistency with the commission, to comply with the requirements of House Bill 2660, and to incorporate recommendations of the task force. The board proposes amendments to §363.15(c) to more closely track the commission's minimum requirements for water conservation plans. Pursuant to 31 TAC §363.15(h) and 30 TAC §288.2(b), the board and commission may accept a water conservation plan which has been approved by the other agency for purposes of satisfying its own regulations and, therefore, must maintain consistent requirements. Proposed new §363.15(c)(1)(A) and (E)-(L) correspond to the commission's requirements for a water conservation plan for municipal uses by a public water supplier set forth in 30 TAC §288.2(a). The board proposes further amendments to §363.15, Required Water Conservation Plan, to comply with Texas Water Code §§15.106, 17.125, 17.277, and 17.857 as amended by House Bill 2660. The board proposes a new §363.15(c)(1)(B) to add the requirement that a water conservation plan must include specific, quantified five-year and ten-year targets for water savings to include goals for water loss programs and goals for municipal use in gallons per capita per day by May 1, 2005. The board also proposes amendments to incorporate water conservation plan components recommended by the task force. Proposed new §363.15(c)(1)(C) and (D) would require a schedule for implementation of and a method for tracking the effectiveness of a required water conservation plan. Both a plan for implementation and a method for tracking the effectiveness of an entity's water conservation practices are useful to achieve the targets and goals required by House Bill 2660 and to enable the entity to make future improvements to its water conservation plan. Proposed new §363.15(c)(2) makes it clear that applicants may adopt water conservation plans which go beyond

the minimum requirements. The board proposes amendments to §363.15(d)(3) to require a new water conservation plan be submitted if the existing plan is more than five years old in order to ensure that the requirement for five-year and ten-year targets for water savings is met. The board proposes to delete §363.15(f) which currently lists measures that may be incorporated into a water conservation plan but that are not otherwise required. The task force is preparing a guide containing a more detailed and comprehensive list of voluntary best management practices for water conservation. The board intends to make this best management practice guide available to the public on the board's website and through guidance materials. The board also proposes to amend §363.15(e) to change the wording so that the term applicant is used consistently throughout this section. The board proposes to delete §363.15(g) since this requirement has been incorporated into proposed new §363.15(c)(1)(M).

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period these sections are in effect there will be an additional cost in the amount of \$8,910 per year for state government, \$16,200 for local government and \$1,620 for small businesses as a result of the enforcement and administration of the proposed rule amendments.

Ms. Callahan has estimated that staff and/or consultant costs associated with preparing, implementing and reviewing a water conservation plan is approximately \$45 per hour. Since it will require the board's staff an average of 6 hours to process each of the 33 water conservation plans that are submitted to the board annually, the total cost to the state each year is calculated to be \$8,910.

Additionally, Ms. Callahan estimates that it will take local governments and small businesses an average of an additional 12 hours to prepare and implement a water conservation plan that meets the new requirements proposed in this rule amendment. Given an average of 30 water conservation plans submitted each year to the board by local governments, the total cost for local governments to comply with the proposed rule is \$16,200 per year. Since an average of three water conservation plans are submitted each year small businesses, the annual cost of compliance for small businesses will be \$1,620. The cost for both local governments and small businesses amounts to \$540 per plan and this requirement would only apply to a small business or local government that is applying for financial assistance from the board.

Ms. Callahan has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be increased water conservation and improved planning to ensure water demands can be met. The proposed rules should further the reductions of water demand on public water supplies and the wastewater load on wastewater treatment plants, thus reducing or deferring capital infrastructure costs to local governments that provide water and wastewater services.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Geoff Petrov, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to [Geoffrey.Petrov@twdb.state.tx.us](mailto:Geoffrey.Petrov@twdb.state.tx.us) or by fax at (512) 463-5580.

**SUBCHAPTER A. GENERAL PROVISIONS**  
**DIVISION 1. INTRODUCTORY PROVISIONS**  
**31 TAC §363.2**

The amendments are proposed under the authority of the Texas Water Code §§6.101, 15.106, 17.125, 17.277, and 17.857.

Cross reference to statute: Water Code, Chapter 15, Subchapter C and Chapter 17, Subchapters D, F and I.

§363.2. *Definitions of Terms.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapters 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) - (16) (No change.)

(17) Municipal use in gallons per capita per day--The total average daily amount of water diverted or pumped for treatment for potable use by a public water supply system. The calculation is made by dividing the water diverted or pumped for treatment for potable use by population served. Indirect reuse volumes shall be credited against total diversion volumes for the purpose of calculating gallons per capita per day for targets and goals developed pursuant to a water conservation plan.

(18) ~~[(17)]~~ Pre-design commitment--A commitment by the board prior to completion of planning or design pursuant to §363.16 of this title (relating to Pre-design Funding Option).

(19) ~~[(18)]~~ Release--The time at which funds are made available to the loan or grant recipient or to a state participation recipient pursuant to a master agreement.

(20) ~~[(19)]~~ Trust agent--The party appointed by the applicant and approved by the executive administrator of the board to hold the funds which are not eligible for release to the loan recipient.

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 September 22, 2004.

TRD-200405847

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: November 17, 2004

For further information, please call: (512) 475-2052



## DIVISION 2. GENERAL APPLICATION PROCEDURES

### 31 TAC §363.15

The amendments are proposed under the authority of the Texas Water Code §§6.101, 15.106, 17.125, 17.277, and 17.857.

Cross reference to statute: Water Code, Chapter 15, Subchapter C and Chapter 17, Subchapters D, F and I.

§363.15. *Required Water Conservation Plan.*

(a) An applicant, if not eligible for an exemption under subsection (d) of this section, shall submit either with its application or separately under subsection (b) of this section, two copies of its water conservation plan for approval. The executive administrator shall review all water conservation plans submitted as part of an application

for financial assistance for a project, shall determine if the plans are adequate, and shall present information to the board on the water conservation plan when the application is considered by the board.

(b) An applicant may elect to submit the required water conservation plan after the board approves its application for assistance but before any funds are released. In such case, the applicant shall submit the conservation plan to the executive administrator for review. The executive administrator shall make a preliminary determination as to whether the plan is adequate, and shall submit the plan to the board for consideration. The board will approve, disapprove, or approve with modifications the applicant's water conservation plan during an open meeting. The board may revise the amount and conditions of its financial commitment after considering the water conservation plan.

(c) The water conservation plan required under this section shall include an evaluation of the applicant's water and wastewater system and customer water use characteristics to identify water conservation opportunities and shall set goals to be accomplished by water conservation measures. The water conservation plan shall provide information in response to the following minimum requirements. If the plan does not provide information for each minimum requirement, the applicant shall include in the plan an explanation of why the requirement is not applicable. [The plan shall include a long-term water conservation plan and an emergency water demand management plan. The long-term water conservation plan shall, at a minimum, include:]

(1) Minimum requirements. Water conservation plans shall include the following elements:

(A) a utility profile including, but not limited to, information regarding population and customer data, water use data, water supply system data, and wastewater system data;

(B) beginning May 1, 2005, specific, quantified five-year and ten-year targets for water savings to include goals for water loss programs and goals for municipal use, in gallons per capita per day;

(C) a schedule for implementing the plan to achieve the applicant's targets and goals;

(D) a method for tracking the implementation and effectiveness of the plan;

(E) a master meter to measure and account for the amount of water diverted from the source of supply;

(F) a program for universal metering of both customer and public uses of water, for meter testing and repair, and for periodic meter replacement;

(G) measures to determine and control unaccounted-for uses of water (for example, periodic visual inspections along distribution lines; annual or monthly audit of the water system to determine illegal connections, abandoned services, etc.);

(H) a program of leak detection, repair, and water loss accounting for the water transmission, delivery, and distribution system in order to control unaccounted-for uses of water;

(I) a program of continuing public education and information regarding water conservation;

(J) a water rate structure which is not "promotional," i.e., a rate structure which is cost-based and which does not encourage the excessive use of water;

(K) a means of implementation and enforcement which shall be evidenced by:

(i) a copy of the ordinance, resolution, or tariff indicating official adoption of the water conservation plan by the applicant; and

(ii) a description of the authority by which the applicant will implement and enforce the conservation plan;

(L) documentation that the regional water planning groups for the service area of the applicant have been notified of the applicant's water conservation plan; and

(M) a drought contingency plan which, at a minimum, includes, trigger conditions, demand management measures, initiation and termination procedures, a means of implementation, and measures to educate and inform the public.

(2) Additional conservation strategies. The water conservation plan may also include other water conservation practice, method, or technique that the applicant deems appropriate.

~~{(1) measures to determine and control unaccounted for water including universal metering of customer and public uses, periodic meter testing and repair, and distribution system leak detection and repair;}~~

~~{(2) non-promotional retail water rate structures which do not promote the excessive use of water by retail customers; and}~~

~~{(3) a continuing program of education and information which provides water conservation information directly to each residential, industrial and commercial customer annually; includes at least one other type of annual educational water conservation activity; and provides water conservation literature to new customers when they apply for service;}~~

(d) The board may not require an applicant to provide a water conservation plan if the board determines an emergency exists; the amount of financial assistance to be provided is \$500,000 or less; implementation of a water conservation program is not reasonably necessary to facilitate water conservation; or the application is for flood control purposes.

(1) An emergency exists when:

(A) a public water system or wastewater system has already failed, or is in a condition which poses an imminent threat of failure, causing the health and safety of the citizens served to be endangered;

(B) sudden, unforeseen demands are placed on a water system or wastewater system (i.e., because of military operations or emergency population relocation);

(C) a disaster has been declared by the governor or president; or

(D) the governor's Division of Emergency Management of the Texas Department of Public Safety has determined that an emergency exists.

(2) The board shall review an application for which an emergency is determined to exist six months after the board commits to financial assistance, and also at the time of any extensions of the loan commitment. If the board finds that the emergency no longer exists, it may then require submission, within six months, of a water conservation plan satisfactory to the board before making any further disbursements on the commitments.

(3) Submission of a plan is not necessary to facilitate water conservation if the applicant has implemented a water conservation plan that meets the requirements of this section after May 1, 2005 and

that plan has been in effect for less than five years [already has a program in effect that meets the requirements of this section].

(e) If the applicant ~~[political subdivision]~~ will utilize the project financed by the board to furnish water or wastewater services to another entity ~~[political subdivision]~~ that in turn will furnish the water or wastewater services to the ultimate consumer, the requirements for the water conservation plan may be met either through contractual agreements between the applicant and that entity ~~[political subdivisions]~~ providing for establishment of a water conservation plan, which shall be included in the contract at the earliest of the original execution, renewal or substantial amendment of that contract, or by other appropriate measures.

~~{(f) The long-term water conservation plan may also include other measures that the political subdivision deems appropriate. These may include, but are not limited to, measures such as:}~~

~~{(1) codes and ordinances which require the use of water-conserving technologies;}~~

~~{(2) measurement and control of excessive pressure in the distribution system;}~~

~~{(3) ordinances to promote efficiency and avoid waste;}~~

~~{(4) commercial and residential conservation audits for indoor and landscape water uses;}~~

~~{(5) plumbing fixture replacement and retrofit programs;}~~

~~{(6) recycling and reuse of reclaimed wastewater and/or gray water; and}~~

~~{(7) other measures as may be applicable.}~~

~~{(g) The emergency demand management plan shall include trigger conditions, demand management measures, initiation and termination procedures, means of implementation, and measures to educate and inform the public.}~~

~~{(h) The board will accept a water conservation plan determined by the commission to satisfy the requirements of 30 TAC Chapter 288.~~

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 September 22, 2004.

TRD-200405848

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: November 17, 2004

For further information, please call: (512) 475-2052



CHAPTER 371. DRINKING WATER STATE  
REVOLVING FUND  
SUBCHAPTER C. APPLICATION FOR  
ASSISTANCE

31 TAC §371.37

The Texas Water Development Board (the board) proposes an amendment to 31 TAC §371.37, concerning Drinking Water

State Revolving Fund. The board proposes to amend §371.37, Required Water Conservation Plan, by deleting the current text of §371.37 and replacing it with a reference to 31 TAC §363.15 which also provides the requirements for a water conservation plan. The current text of §371.37 is duplicative of 31 TAC §363.15. Deleting the text of §371.37 will result in more streamlined and understandable rules by eliminating duplication of text in different chapters of the board's rules. The proposed reference to 31 TAC §363.15 will require that applicants under Chapter 371 have to provide a water conservation plan as required by 31 TAC §363.15 before receiving funds from the board.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period the section is in effect there will not be fiscal implications on state and local government as a result of enforcement and administration of this section.

Ms. Callahan has also determined that for the first five years the section, as proposed, is in effect the public benefit anticipated as a result of enforcing the proposed section will be to have more streamlined and easily understandable rules. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the section as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Geoff Petrov, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to Geoffrey.Petrov@twdb.state.tx.us or by fax at (512) 463-5580.

The amendment is proposed under the authority of the Texas Water Code §6.101 and §15.605.

Cross reference to statute: Water Code, Chapter 15, Subchapter C and Chapter 17, Subchapters D, F and I.

*§371.37. Required Water Conservation Plan.*

~~[(a)] An applicant shall submit a water conservation plan prepared in accordance with §363.15 of this title (relating to Required Water Conservation Plan). [The applicant, if not eligible for an exemption, shall submit either with its application or separately under subsection (b) of this section two copies of a water conservation plan for approval. The executive administrator shall review all water conservation plans submitted as part of an application for financial assistance for a project, shall determine if the plans are adequate, and shall present information to the board on the water conservation plan when the application is considered by the board.]~~

~~[(b) An applicant may elect to submit the required water conservation plan after the board approves its application for assistance but before any funds are released. In such case, the applicant shall submit the conservation plan to the executive administrator for review. The executive administrator shall make a preliminary determination as to whether the plan is adequate, and shall submit the plan to the board for consideration. The board will approve, disapprove, or approve with modifications the applicant's water conservation plan during an open meeting. The board may revise the amount and conditions of its financial commitment after considering the water conservation plan.]~~

~~[(c) The water conservation plan required under subsections (a) or (b) of this section shall include an evaluation of the applicant's water and wastewater system and shall set goals to be accomplished by water conservation measures. The plan shall include a long-term water conservation plan and an emergency water demand management plan. In addition to any elements deemed appropriate by the applicant, the long-term plan shall include the following:]~~

~~[(1) measures to determine and control unaccounted for water including universal metering of both customer and public uses, periodic meter testing and repair, and distribution system leak detection and repair;]~~

~~[(2) non-promotional retail water rate structures which do not promote the excessive use of water by retail customers; and]~~

~~[(3) a continuing program of education and information which provides water conservation information directly to each residential, industrial and commercial customer annually, includes at least one other type of annual educational water conservation activity, and provides water conservation literature to new customers when they apply for service.]~~

~~[(d) The board may not require an applicant to provide a water conservation plan if the board determines an emergency exists, the amount of financial assistance to be provided is \$500,000 or less, or implementation of a water conservation program is not reasonably necessary to facilitate water conservation.]~~

~~[(1) An emergency exists when:]~~

~~[(A) a water system has failed, causing the health and safety of the citizens served to be endangered;]~~

~~[(B) sudden, unforeseen demands are placed on a water system (i.e., because of military operations or emergency population relocation);]~~

~~[(C) a disaster has been declared by the governor or president; or]~~

~~[(D) the Governor's Division of Emergency Management of the Texas Department of Public Safety has determined that an emergency exists.]~~

~~[(2) The board shall review an application for which an emergency is determined to exist six months after the board commits to financial assistance, and also at the time of any extensions of the loan commitment. If the board finds that the emergency no longer exists, it may then require submission of a water conservation plan satisfactory to the board, before making any further disbursements on the commitments.]~~

~~[(3) Submission of a plan is not necessary to facilitate water conservation if the applicant already has a program in effect that meets the requirements of this section.]~~

~~[(c) If the applicant will utilize the project financed by the board to furnish water services to another entity that in turn will furnish the water services to the ultimate consumer, the requirements for the water conservation plan may be met either through contractual agreements between the applicant and the other entity providing for establishment of a water conservation plan, which shall be included in the contract at the earliest of the original execution, renewal or substantial amendment of that contract, or by other appropriate measures.]~~

~~[(f) The long term water conservation plan may also include other measures that the applicant deems appropriate. These may include, but are not limited to, measures such as:]~~

~~[(1) codes and ordinances which require the use of water-conserving technologies;]~~

~~[(2) measurement and control of excessive pressure in the distribution system;]~~

~~[(3) ordinances to promote efficiency and avoid waste;]~~

~~[(4) commercial and residential conservation audits for indoor and landscape water uses;]~~

- ~~[(5) plumbing fixture replacement and retrofit programs;]~~
- ~~[(6) recycling and reuse of reclaimed wastewater and/or gray water; and]~~
- ~~[(7) other measures as may be applicable.]~~

~~[(g) The emergency demand management plan shall include trigger conditions, demand management measures, initiation and termination procedures, means of implementation, and measures to educate and inform the public.]~~

~~[(h) The board will accept a water conservation plan determined by the commission to satisfy the requirements of 30 TAC Chapter 288 (Water Conservation Plans, Guidelines, and Requirements).]~~

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

Filed with the Office of the Secretary of State on September 22, 2004.

TRD-200405849  
 Suzanne Schwartz  
 General Counsel  
 Texas Water Development Board  
 Proposed date of adoption: November 17, 2004  
 For further information, please call: (512) 475-2052



**CHAPTER 375. CLEAN WATER STATE  
 REVOLVING FUND  
 SUBCHAPTER A. GENERAL PROVISIONS  
 DIVISION 3. APPLICATIONS FOR  
 ASSISTANCE**

**31 TAC §375.37**

The Texas Water Development Board (the board) proposes an amendment to 31 TAC §375.37, concerning Clean Water State Revolving Fund. The board proposes to amend §375.37, Required Water Conservation Plan, by deleting the current text of §375.37 and replacing it with a reference to 31 TAC §363.15 which also provides the requirements for a water conservation plan. The current text of §375.37 is duplicative of 31 TAC §363.15. Deleting the text of §375.37 will result in more streamlined and understandable rules by eliminating duplication of text in different chapters of the board's rules. The proposed reference to 31 TAC §363.15 will require that applicants under Chapter 375 have to provide a water conservation plan as required by 31 TAC §363.15 before receiving funds from the board.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period the section is in effect there will not be fiscal implications on state and local government as a result of enforcement and administration of this section.

Ms. Callahan has also determined that for the first five years the section, as proposed, is in effect the public benefit anticipated as a result of enforcing the proposed section will be to have more streamlined and easily understandable rules. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the section as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Geoff Petrov, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to Geoffrey.Petrov@twdb.state.tx.us or by fax at (512) 463-5580.

The amendment is proposed under the authority of the Texas Water Code §6.101 and §15.605.

Cross reference to statute: Water Code, Chapter 15, Subchapter C and Chapter 17, Subchapters D, F and I.

*§375.37. Required Water Conservation Plan.*

~~[(a)] An applicant shall submit a water conservation plan prepared in accordance with §363.15 of this title (relating to Required Water Conservation Plan). [The applicant, if not eligible for an exemption, shall submit either with its application or separately under subsection (b) of this section two copies of a water conservation plan for approval. The executive administrator shall review all water conservation plans submitted as part of an application for financial assistance for a project, shall determine if the plans are adequate, and shall present information to the board on the water conservation plan when the application is considered by the board.]~~

~~[(b) An applicant may elect to submit the required water conservation plan after the board approves its application for assistance, but before any funds are released. In such case, the applicant shall submit the conservation plan to the executive administrator for review. The executive administrator shall make a preliminary determination as to whether the plan is adequate, and shall submit the plan to the board for consideration. The board will approve, disapprove, or approve with modifications the applicant's water conservation plan during an open meeting. The board may revise the amount and conditions of its financial commitment after considering the water conservation plan.]~~

~~[(c) The water conservation plan required under subsections (a) or (b) of this section shall include an evaluation of the applicant's water and wastewater system and shall set goals to be accomplished by water conservation measures. The plan shall include a long-term water conservation plan and an emergency water demand management plan. In addition to any elements deemed appropriate by the applicant, the long-term plan shall include the following:]~~

~~[(1) measures to determine and control unaccounted for water including universal metering of both customer and public uses; periodic meter testing and repair; and distribution system leak detection and repair;]~~

~~[(2) non-promotional retail water rate structures which do not promote the excessive use of water by retail customers; and]~~

~~[(3) a continuing program of education and information which provides water conservation information directly to each residential, industrial and commercial customer annually, includes at least one other type of annual educational water conservation activity, and provides water conservation literature to new customers when they apply for service.]~~

~~[(d) The board may not require an applicant to provide a water conservation plan if the board determines an emergency exists, the amount of financial assistance to be provided is \$500,000 or less, or implementation of a water conservation program is not reasonably necessary to facilitate water conservation.]~~

~~[(1) An emergency exists when:]~~

~~[(A) a water system has failed, causing the health and safety of the citizens served to be endangered;]~~

~~[(B) sudden, unforeseen demands are placed on a water system (i.e., because of military operations or emergency population relocation);]~~

~~[(C) a disaster has been declared by the governor or president; or]~~

~~[(D) the Governor's Division of Emergency Management of the Texas Department of Public Safety has determined that an emergency exists.]~~

~~[(2) The board shall review an application for which an emergency is determined to exist six months after the board commits to financial assistance, and also at the time of any extensions of the loan commitment. If the board finds that the emergency no longer exists, it may then require submission of a water conservation plan satisfactory to the board, before making any further disbursements on the commitments.]~~

~~[(3) Submission of a plan is not necessary to facilitate water conservation if the applicant already has a program in effect that meets the requirements of this section.]~~

~~[(e) If the applicant will utilize the project financed by the board to furnish water services to another entity that in turn will furnish the water services to the ultimate consumer, the requirements for the water conservation plan may be met either through contractual agreements between the applicant and the other entity providing for establishment of a water conservation plan, which shall be included in the contract at the earliest of the original execution, renewal or substantial amendment of that contract, or by other appropriate measures.]~~

~~[(f) The long-term water conservation plan may also include other measures that the applicant deems appropriate. These may include, but are not limited to, measures such as:]~~

~~[(1) codes and ordinances which require the use of water-conserving technologies;]~~

~~[(2) measurement and control of excessive pressure in the distribution system;]~~

~~[(3) ordinances to promote efficiency and avoid waste;]~~

~~[(4) commercial and residential conservation audits for indoor and landscape water uses;]~~

~~[(5) plumbing fixture replacement and retrofit programs;]~~

~~[(6) recycling and reuse of reclaimed wastewater and/or gray water; and]~~

~~[(7) other measures as may be applicable.]~~

~~[(g) The emergency demand management plan shall include trigger conditions, demand management measures, initiation and termination procedures, means of implementation, and measures to educate and inform the public.]~~

~~[(h) The board will accept a water conservation plan determined by the commission to satisfy the requirements of 30 TAC Chapter 288 (relating to Water Conservation Plans, Guidelines, and Requirements).]~~

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

Filed with the Office of the Secretary of State on September 22, 2004.

TRD-200405850

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: November 17, 2004

For further information, please call: (512) 475-2052

◆ ◆ ◆

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 3. TEXAS YOUTH COMMISSION

#### CHAPTER 85. ADMISSION AND PLACEMENT

##### SUBCHAPTER B. PLACEMENT PLANNING

###### 37 TAC §85.35

*(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 Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Youth Commission (TYC) proposes the repeal of §85.35, concerning Maximum Length of Stay for General Offenders. The repeal of the rule will allow for a significantly revised rule to be published in its place. The revised rule can be found in this same issue of the *Texas Register*.

Terry Graham, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the publication of an updated rule to replace this section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to [deanna.lloyd@tyc.state.tx.us](mailto:deanna.lloyd@tyc.state.tx.us).

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its function.

The proposed rule affects the Human Resources Code, §61.034.

§85.35. *Maximum Length of Stay for General Offenders*

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 September 24, 2004.

TRD-200405894



Dwight Harris  
Executive Director  
Texas Youth Commission  
Earliest possible date of adoption: November 7, 2004  
For further information, please call: (512) 424-6301



### 37 TAC §85.35

The Texas Youth Commission (TYC) proposes new §85.35, concerning Maximum Length of Stay for Type A Violent and Sentenced Offenders. The new rule will expand the number of youth, excluding sentenced offenders, Type A violent offenders, mentally ill youth and Priority 1 youth who have not completed specialized treatment, who could leave the institutional setting without completing their Resocialization program when the length of stay becomes disproportionate relative to the severity of their committing offense and their risk to the community.

Terry Graham, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to avoid undue confinement in an institutional setting for youth who have not completed the Resocialization program, but have exceeded the minimum length of stay. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The new rule is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to discharge a youth from control when it is satisfied that discharge will best serve the child's welfare and the protection of the public.

The proposed rule affects the Human Resources Code, §61.034.

#### §85.35. Maximum Length of Stay for Other Than Type A Violent and Sentenced Offenders.

(a) Purpose. The Resocialization program is designed for youth who reasonably apply themselves to complete the program within their assigned minimum length of stay. There are, however, a small number of resistant youth who do not complete the Resocialization program within their initial minimum length of stay. When the length of institutional stay for these youth becomes disproportionate relative to the severity of their committing offense and level of risk to the community, provision must be made to cut short their Resocialization program in the institution and plan for their supervision and services on parole.

(b) Applicability. This rule does not apply to:

- (1) any other movement without program completion;
- (2) youth who have completed program requirements. See (GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders);

(3) priority 1 youth who are eligibility for admission to specialized treatment programs;

(4) sentenced or Type A violent offenders as defined in (GAP) §85.23 of this title (relating to Classification); and

(5) youth who are unable to progress further in the agency's rehabilitation program because of mental illness or mental retardation and who have completed their minimum lengths of stay. See (GAP) §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth).

(c) Explanation of Terms Used.

(1) General Offender - means a youth who is classified as a general offender as defined in (GAP) §85.23 of this title and has never been classified as a sentenced or Type A violent offender.

(2) Type B Violent Offender, Chronic Serious Offender, Controlled Substances Dealer, and Firearms Offender - means a youth who meets the definition in (GAP) §85.23 of this title and has never been classified as a sentenced or Type A violent offender.

(3) Minimum Length of Stay - means the assigned minimum length of stay for the youth's classification, see (GAP) §85.23 of this title, plus any disciplinary extensions to the minimum length of stay. See (GAP) §85.25 of this title (relating to Minimum Length of Stay).

(4) Individual Case Plan (ICP) - the individualized plan for each youth that assesses a youth's needs and strengths, identifies objectives with specific strategies to address both needs and strengths, and is reviewed and adjusted as the youth progresses or as new needs are identified.

(5) Special Service Committee (SSC) exit interview - is a process by which the SSC determine whether the youth meets program completion criteria and whether the release ICP adequately addresses the youth's identified risk factors for re-offending. The exit interview is a face-to-face interview with the youth, along with review and approval of the release packet.

(6) Release Packet - includes specific documents for review and approval prior to a youth's release. The documents are organized in tabbed sections in a notebook to form the release packet. The release packet includes the following information:

- (A) forensic psychological evaluation;
- (B) release plan;
- (C) home assessment, if applicable;
- (D) incident summary;
- (E) specialized treatment summary, if applicable; and
- (F) victim involvement information, if applicable.

(d) General Requirements.

(1) TYC shall comply with Chapter 57, Family Code and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to (GAP) §81.35 of this title (relating to Rights of Victims).

(2) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to (GAP) §85.45 of this title (relating to Parole of Undocumented Nationals) for procedures.

(3) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to (GAP) §87.85 of this title (relating to Sex Offender Registration).

(4) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to notify parents or guardians of any movement.

(e) Criteria for Release to TYC Parole.

(1) For General Offenders. General offenders who have completed their initial minimum length of stay, but have not earned phase 4 on all three components of Resocialization, see (GAP) §87.3 of this title (relating to Resocialization Program), will be released TYC parole (home or home substitute) when the following requirements are met:

(A) no Category I rule violations within 90 days prior to the Special Services Committee (SSC) exit interview and during the approval process;

(B) four (4) months have elapsed since completion of the initial minimum length of stay and completion of phase A3,B3, C3 resocialization goals;

(C) eight (8) months have elapsed since completion of the initial minimum length of stay and completion of phase A2,B2,C2 resocialization goals; or

(D) 12 months have elapsed since completion of the initial minimum length of stay and completion of phase A1, B1, C1 resocialization goals.

(2) For Type B Violent Offenders, Chronic Serious Offenders, Controlled Substances Dealers, and Firearms Offenders. Type B violent offenders, chronic serious offenders, controlled substances dealers, and firearms offenders who have completed their initial minimum length of stay, but have not earned phase 4 on all three components of Resocialization program, see (GAP) §87.3 of this title (relating to Resocialization Program), will be released on parole when the following requirements are met:

(A) no Category I rule violations within 90 days prior to the SSC exit interview and during the approval process;

(B) eight (8) months have elapsed since completion of the initial minimum length of stay and completion of phase A3,B3,C3 resocialization goals;

(C) 12 months have elapsed since completion of the initial minimum length of stay and completion of phase A2,B2,C2 resocialization goals; or

(D) 18 months have elapsed since completion of the minimum length of stay and completion of phase A1,B1,C1 resocialization goals.

(f) Decision Authority for Approval of Release.

(1) The final decision authority shall approve the youth's release plan upon a determination that the youth meets the required criteria as set forth in subsection (d) of this rule and the release ICP adequately addresses risk factors.

(2) A youth shall be released to TYC parole within two (2) weeks of the SSC exit interview validating release eligibility. Upon the approval by the final decision authority, additional time may be granted up to 30 days as the need indicates.

(3) The final decision authority is the Sentenced Offenders Disposition Department, unless the superintendent or quality assurance supervisor appeals the decision. If the decision is appealed, the appropriate director of juvenile corrections is the final decision authority.

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 September 24, 2004.

TRD-200405895

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 424-6301



**37 TAC §85.45**

The Texas Youth Commission (TYC) proposes an amendment to §85.45, concerning Parole of Undocumented Foreign Nationals. The amendment to the section will allow the agency to track Undocumented Foreign Nationals upon release to Immigration, customs and Enforcement (ICE).

Terry Graham, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034. §85.45. *Parole of Undocumented Foreign Nationals.*

(a) Purpose. The purpose of this rule is to establish procedures [a procedure] whereby the Texas Youth Commission (TYC) works with the United States Immigration and Customs Enforcement (ICE) for parole release of youth who are undocumented foreign nationals. No youth who are undocumented foreign nationals shall be detained in a secure facility for the sole purpose of deportation.

(b) Applicability. Procedures herein apply to all programs releasing TYC youth who are undocumented foreign nationals.

(c) Explanation of Terms Used.

(1) Undocumented Foreign Nationals--youth who do not have legal residence in the United States as determined by the ICE.

(2) Primary Service Worker (PSW)--the generic title given to persons at each TYC operated institution or residential contract care program who are assigned the primary responsibility for the case work

for individual youth and for the administration of the case management standards. These are usually caseworkers, parole officers, and quality assurance specialists. Other designated staff in the system may also be considered as a PSW.

~~(d)~~ All residential programs are required to notify the ICE of the presence of an undocumented foreign national youth at the facility.

(d) ~~(e)~~ Undocumented foreign nationals will not be placed in a minimum restriction parole location (home or home substitute) until a copy of the referral letter from the residential program to ICE is received by the assigned parole officer.

(e) ~~(f)~~ In anticipation of completion of required release criteria and not less than 45 days prior to anticipated release date, the releasing authority shall inform ICE of the pending release of any undocumented foreign national youth and request a residency and deportation status determination within 15 days of receipt of notification. Forty-five (45) days before parole release the TYC staff of the releasing program shall:

(1) complete the parole release packet and schedule a date for release;

(2) send to the ICE in the region, written notice of the release date, request for confirmation of the date and of transportation within 15 days of receipt of notification, and request that ICE meet with the youth prior to the date and send a copy of the notice to the receiving PSW~~[assigned parole officer]~~;

(3) notify the receiving PSW~~[assigned parole officer]~~ and appropriate consulate of release arrangements and all pertinent information; ~~and~~ send the family notification of parole release, and make reasonable attempts to provide translation where necessary; and

(4) send notification of parole release to the appropriate authorities.

~~(f)~~ ~~(g)~~ On the day of parole release, ICE is responsible for transporting the youth to a port of entry.

(g) ~~(h)~~ If the release of a youth is canceled for any reason, the releasing program shall immediately notify ICE, receiving PSW~~[parole officer]~~, and other affected parties.

(h) ~~(i)~~ If the youth is not deported by ICE or if ICE fails to respond within 15 days of receipt of notification with a date of transportation~~[confirm the transportation date at least 30 days prior to expected release]~~, the receiving PSW~~[parole officer]~~ and institutional placement coordinator will proceed with placement options, at least 30 days prior to the release date.

(i) ~~(j)~~ The case of a deported youth must be transferred to a designated caseload and supervised by a parole officer responsible for the youth in the committing county.

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 September 24, 2004.

TRD-200405896

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 424-6301

◆ ◆ ◆  
CHAPTER 97. SECURITY AND CONTROL  
SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.9

*(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 Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Youth Commission (TYC) proposes the repeal of §97.9, concerning Youth Search. The repeal of the rule will allow for a significantly revised rule to be published in its place. The revised rule can be found in this same issue of the *Texas Register*.

Terry Graham, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the publication of an updated rule to replace this section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its function.

The proposed rule affects the Human Resources Code, §61.034.

§97.9. Youth Search.

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 September 24, 2004.

TRD-200405897

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 424-6301

◆ ◆ ◆  
37 TAC §97.9

The Texas Youth Commission (TYC) proposes new §97.9, concerning Youth Search. The new rule will establish requirements for searching the youth, their property, and youth rooms in order to detect contraband.

Terry Graham, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased protection of youth and staff in TYC facilities and to the general public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to be responsible for the welfare of youth in its custody.

The proposed rule affects the Human Resources Code, §61.034.

§97.9. Youth Search.

(a) Purpose. The purpose of this rule is to establish requirements for searching Texas Youth Commission (TYC) youth, their property, and youth rooms in order to detect contraband.

(b) Applicability. Requirements in this rule are consistent with (GAP) §93.1 of this title (relating to Basic Youth Rights).

(c) Explanation of Terms Used.

(1) Reasonable Belief--a belief based on facts or circumstances sufficient to cause a reasonable person to believe that the person to be searched has prohibited items.

(2) Probable Cause--a determination based on facts and circumstances that would cause a reasonably prudent person to believe it is more likely than not that the person to be searched has a prohibited item.

(d) Designated staff may conduct a search of a TYC youth or a youth's room in a residential facility other than the youth's home, for the purpose of finding and seizing contraband.

(e) Areas where youth are housed or served may be subject to be searched by the use of the canine (K9) teams. See (GAP) §97.13 of this title (relating to Use of Canine (K-9) Teams).

(f) Room Searches and Pat Down Searches. Room searches and pat down searches to detect and deter possession of contraband or to protect persons may be conducted with or without probable cause so long as searches are conducted in a reasonable manner.

(1) Room and pat down searches will be conducted in accordance with the following rules.

(A) Room and pat down searches may be unannounced and irregularly timed.

(B) Room and pat down searches are to be conducted at least twice a month, or as necessary to control possession by youth of unauthorized items or to recover missing or stolen property.

(C) Two designated staff members must be in attendance for searches and must be of the same sex as the youth.

(D) Room and pat down searches are to be conducted in a professional manner. Staff shall not make jokes, conversation, or comments while conducting searches.

(E) Room and routine pat down searches will be documented on the Search Log form.

(F) The presence of the youth whose property is being searched is preferable for all room searches.

(2) Pat Down Searches.

(A) Pat down searches is conducted over youth's clothes.

(B) Designated staff must inform youth a pat down search will be conducted on him/her.

(C) Staff shall conduct pat down searches according to the following method:

(i) staff instructs youth to pull pockets out and remove all objects from pockets;

(ii) staff instructs youth remove coat and any other heavy clothing;

(iii) staff stands behind the youth and have youth stand with feet apart and arms extended;

(iv) staff instructs youth spread fingers and rotate hands;

(v) staff instructs youth to slightly tilt head backward and open mouth to visually check youth mouth, under tongue and cheeks;

(vi) staff checks youth shirt/sweater by squeezing along collar, shoulders, along arms to wrists, under arms (unroll sleeves); feel all seams;

(vii) staff pats down upper body such as neck, upper chest, stomach to belt; sides along ribs; back and neck to belt;

(viii) staff instructs female youth to unhook bra, without removing shirt or bra; staff shakes bra by lifting bra straps (over clothes), check straps and bands;

(ix) staff pats down lower torso--buttocks (push between cheeks) and rear pockets; lower abdomen (stomach) and front pockets; groin;

(x) staff pats down pant legs (one leg at a time), cuffs and tops of shoes;

(xi) staff instructs youth to remove shoes and socks. Staff has youth to spread toes apart for visual check. Staff checks shoes and heels;

(xii) staff inspects all objects from pockets, coats or any heavy clothing before returning to youth.

(g) Strip Searches.

(1) Strip searches will be based on reasonable belief that the youth has custody or control of contraband or other prohibited material. Reasonable belief is not required when youth returns from contact with the general public or from outside the facility.

(2) Strip searches shall:

(A) be conducted in a private setting that aids in the avoidance of unnecessary force, embarrassment, or indignity to the youth;

(B) be conducted by two trained security staff members and must be of the same sex as the youth. Law enforcement officers, detention workers, and duly designated agents of the court may assist TYC staff in such a search if necessary;

(C) be conducted in a professional manner. Staff shall not make jokes, conversation, or comments while conducting the strip search.

(D) be documented on the Search Log form for routine strip search and non-routine strip searches will be documented on the Incident Report form.

(3) Trained staff shall conduct strip searches, including visual inspection of body cavities and/or physical inspection of the mouth, according to the following methods:

(A) staff must inform youth a strip search will be conducted on him/her;

(B) staff shall not touch the youth during strip searches;

(C) staff instructs youth to pull pockets out and remove all objects from pockets;

(D) staff instructs youth to remove coat or any other heavy clothing;

(E) staff instructs youth to spread fingers and rotate hands;

(F) staff instructs youth to remove all clothing except underwear (one piece at a time), and the youth hands the clothing item (one piece at a time) to staff for search;

(G) staff checks collars, cuffs, waistbands, belt loops, pockets, seams, and linings by squeezing the items. Staff must check for rips or stitching and unroll socks, turn inside out if necessary;

(H) staff checks the shoes, heels, toes, and soles;

(I) staff instructs youth remove bands, clips, nets, etc. from hair;

(J) staff instructs youth run his/her fingers through their hair, going downward, then backwards;

(K) staff instructs youth to slightly tilt head backward and open mouth to visually check youth mouth, under tongue and cheeks. Staff instructs youth to run a finger through their mouth, around gums, cheeks, etc.;

(L) staff checks behind and in the youth's ears;

(M) staff instructs youth to tilt head back and look into nose;

(N) staff instructs the youth to spread arms and open hands--look for punctures, other marks; check under fingernails and between finger; look at all sides of hands and arms;

(O) staff instructs female youth to remove bra/under-shirt;

(P) staff instructs youth to raise arms--look at armpits and sides of upper body;

(Q) staff instructs youth to remove underpants;

(R) staff checks the lower stomach;

(S) staff instructs male youth to lift penis and testicles for examination;

(T) staff instructs youth to spread legs--look for strings, other evidence of objects hidden in body;

(U) staff instructs youth to bend over and spread cheeks to check buttocks;

(V) staff instructs youth to squat and cough;

(W) staff checks seams/bands of underpants and return to the youth;

(X) staff checks each leg one at a time;

(Y) staff checks between each toe by having the youth spread his/her toes;

(Z) staff looks at soles of feet and has the youth shake his/her toes;

(AA) if the youth has a bandage, staff must check under the bandage; and

(BB) staff must return the youth's undergarments as soon as possible.

(h) Physical Body Cavity Searches.

(1) Physical body cavity searches will only occur on probable cause that the youth possesses contraband or other prohibited material and with the authorization of the superintendent.

(2) Physical body cavity searches are conducted by off-site medical personnel who are not part of the facility's health care staff.

(3) Physical body cavity searches refer to manual or instrument inspection of body cavities including the vagina or rectum. Physical body cavity searches shall take place in a private setting that aids in the avoidance of unnecessary force, embarrassment, or indignity to the youth.

(4) Physical body cavity searches shall be documented on the Incident Report form and the Daily Shift Log form.

(i) Searches of rooms, searches of youth being admitted to facilities, and searches of youth after visitation may be conducted routinely. At all times when unauthorized items are seized from a youth, the search and disposition of items shall be documented. Also see (GAP) §97.11 of this title (relating to Control of Unauthorized Items Seized).

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 September 24, 2004.

TRD-200405898

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 424-6301



**37 TAC §97.10**

The Texas Youth Commission (TYC) proposes an amendment to §97.10, concerning Entry Searches. The amendment to the rule will allow for the use of Canine (K-9) Teams to be utilized upon entry, introduce another method of entry search by allowing staff to request that all persons remove their shoes upon entry for further searching and pat down searches in a specific manner and prohibit private cell phones from entering TYC facilities.

Terry Graham, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Graham also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will increased protection of youth and staff in TYC facilities and to the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this amendment.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to be responsible for the welfare of youth in its custody.

The proposed amendment affects the Human Resources Code, §61.034.

§97.10. *Entry Searches.*

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

(c) Explanation of Terms Used.

(1) Reasonable Belief--a belief based on facts or circumstances sufficient to cause a reasonable person to believe that the person to be searched has prohibited items.

(2) Routine Search--a search conducted at a scheduled time during which every person is searched at the entry point of TYC.

(3) Random Search--a search conducted at an unannounced time during which every person will be searched at the entry point of TYC.

(d) Entry Searches.

(1) TYC will conduct routine searches, random searches, or a search anytime there is a reasonable belief a person possesses prohibited items.

(2) Entry searches may involve one or more of the following:

(A) use of metal detectors (walk-through or wand);

(B) use of trained detection dogs;

(C) visual of touch inspection of property;

(D) requiring pockets to be emptied;

(E) removal and inspection of shoes; or

(F) pat-down body search (outside the person's clothing).

(3) Entry searches must be conducted in a reasonable manner and use the least intrusive method possible as determined by the circumstances.

~~[(e) Search will be conducted in a reasonable manner and use the least intrusive method possible as determined by the circumstances.]~~

~~[(d) Entry searches may be conducted by one or more of the following methods:]~~

~~[(1) use of metal detectors (walk-through or wand);]~~

~~[(2) use of trained detection dogs;]~~

~~[(3) visual or touch inspection of property;]~~

~~[(4) requiring pockets to be emptied; or]~~

~~[(5) pat-down body search by a person of the same gender outside the person's clothing.]~~

(e) - (i) (No change.)

(j) The following items are prohibited in secure facilities except with specific permission from the facility administrator:

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

(9) Personal cellular phones;

(10) ~~[(9)]~~ Cameras or video equipment; [or]

(11) Contraband as defined in (GAP) §97.11 of this title (relating to Control of Unauthorized Items Seized); or

(12) ~~[(10)]~~ Any other item perceived by searching staff to be dangerous. The item will be referred to the superintendent or designee for consideration.

(k) - (n) (No change.)

(o) Pat down searches will be conducted in the following manner:

(1) Designated staff must inform the person a pat down will be conducted on him/her.

(2) Two (2) designated staff must be in attendance for pat down searches. The staff that is conducting the pat down search must be of the same sex as the person being searched.

(3) Pat down searches should be conducted in the entry area.

(4) Staff instructs the person to pull his/her pockets out and remove all objects from pockets.

(5) Staff instructs the person to remove his/her coat and any other heavy clothing.

(6) Staff stands behind the person and has the person stand with feet apart and arms extended.

(7) Staff instructs the person to spread fingers and rotate hands.

(8) Staff checks the person's shirt/sweater by squeezing along collar, shoulders, along arms to wrists, under arms, and feel all seams.

(9) Staff pats down upper body such as neck, upper chest, stomach to belt; sides along ribs; back and neck to belt.

(10) Staff pats down lower torso--buttocks, rear and front pockets.

(11) Staff pats down pant legs (one leg at a time), cuffs and tops of shoes.

(12) Staff instructs the person to remove his/her shoes. Staff checks shoes and heels.

(13) Staff inspects all objects from pockets, coats, or any heavy clothing before returning to the person.

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 September 24, 2004.

TRD-200405899

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 424-6301



### 37 TAC §97.13

The Texas Youth Commission (TYC) proposes new §97.13, concerning Use of Canine (K-9) Teams. The new rule will provide guidelines for the management and deployment of the K-9 teams at any TYC facility. The rule will specifically address how the K-9 teams conduct their searches in conjunction with the agency's existing search rules.

Terry Graham, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will increased protection of youth and staff in TYC facilities and to the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to be responsible for the welfare of youth in its custody.

The proposed rule affects the Human Resources Code, §61.034.

#### §97.13. Use of Canine (K-9) Teams.

(a) Purpose. The purpose of this rule is to provide guidelines for the management and deployment of the canine (K-9) teams at Texas Youth Commission (TYC) operated institutions or residential contract care programs.

(b) Applicability.

(1) This rule applies to (GAP) §97.10 of this title (relating to Entry Searches).

(2) This rule applies to (GAP) §97.11 of this title (relating to Control of Unauthorized Items Seized).

(3) This rule applies to (GAP) §97.9 of this title (relating to Youth Search).

(4) This rule applies to Personnel Policy and Procedure Manual (PRS) §01.04 (relating to Search of Employees, Personal Property and Vehicle, and Agency Property).

(c) Explanation of Terms Used.

(1) Contraband K-9 Team--a contraband K-9 team consists of a handler and K-9 capable of detecting and identifying alcohol, tobacco products, gun solvents and prescription medication.

(2) Narcotic K-9 Team--a narcotic K-9 team consists of a handler and K-9 capable of detecting and identifying marijuana, cocaine, methamphetamines, and heroin.

(3) Tracking K-9 Team--a tracking K-9 team consists of a handler and K-9 capable of detecting and identifying articles and human scent.

(4) Alert--a recognized signal from the K-9 to the handler.

(5) Passive Indication--the K-9 is trained to sit, stand, or lay at the point closest to the source of the odor such as, but not limited to, cocaine, heroin, alcohol, marijuana, prescription medication, gun solvents, methamphetamines, and tobacco.

(6) Secure TYC Parking Lot--a parking lot within the perimeter fence of a high restriction TYC facility.

(d) All TYC K-9 handlers are certified annually.

(e) All K-9s used by TYC will be trained in passive indication and are certified annually.

(f) K-9s are used to deter and detect contraband and illegal narcotics, and may be deployed at the discretion of the K-9 handler to conduct routine, random, or specifically requested searches or inspections to the following areas:

(1) any dorm, cell, or other area utilized to house youth;

(2) any school or education building on TYC property;

(3) any cafeteria, kitchen, canteen, or other food preparation area;

(4) any administrative area, staff office, storage building, and restroom;

(5) any other building located on TYC grounds;

(6) any vehicle entering a TYC secure area;

(7) any unassigned state vehicles; and

(8) any TYC parking lot.

(g) Upon entry to a secure facility, all vehicles are subject to be searched by the K-9 team. See (GAP) §97.10 of this title.

(h) Vehicles in a secure or non-secure TYC parking lot are subject to an inspection by the K-9 team. If a K-9 alerts while inspecting a parking lot, local law enforcement may be notified. If notified, any further action will be at the discretion of the local law enforcement. If the vehicle is in a secure parking lot and belongs to an employee, the employee may give consent to search the vehicle. See TYC's (PRS) §01.04.

(i) When K-9 teams inspect areas, all persons will exit the inspected area and will remain out of the area until the inspection has been completed.

(j) Upon a request by the K-9 team, a security staff may assist the K-9 team.

(k) All contraband and narcotics that are seized by the K-9 team shall be documented and consistent with (GAP) §97.11 of this title.

(l) At the entrance of all TYC parking lots, signs shall be posted in English and Spanish noting: This property is subject to canine inspection and search by law enforcement.

(m) With the approval of the assistant deputy executive director of juvenile corrections, TYC K-9 teams will aid in tracking and apprehending youth who have escaped from a high restriction facility.

(n) Persons are prohibited to harm or interfere in any manner with the K-9 or the K-9 team.

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 September 24, 2004.

TRD-200405900

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 424-6301



## PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

### CHAPTER 151. GENERAL PROVISIONS

#### 37 TAC §151.53

The Texas Board of Criminal Justice proposes to amend §151.53, concerning Multiple Employments with the State. The purpose of the amendment is to clarify policy on multiple employments with the State of Texas.

Brad Livingston, Chief Financial Officer for TDCJ, has determined that for the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government.

Mr. Livingston has also determined that for the first five years the rule will be in effect the anticipated public benefit as a result of enforcing the rule will be to enhance public safety. There will be no economic impact on persons required to comply with the rule. There will be no effect on small and micro-businesses.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Carl.Reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code, Chapters 574 and 667; and Texas Constitution, Article XVI, Section 40.

Cross Reference to Statutes: Texas Government Code, Chapters 574 and 667; and Texas Constitution, Article XVI, Section 40.

§151.53. *Multiple Employments [Employment] with the State.*

(a) Purpose. The purpose of this section is to provide procedures regarding applications for and administration of multiple employments [employment] with the State of Texas by employees of the Texas Department of Criminal Justice (TDCJ).

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

(1) Multiple Employments--Simultaneous paid employment for more than one (1) position with one (1) or more state agencies. Certain higher education institutions are considered state agencies for the purpose of multiple employments (i.e., state universities, community colleges).

(2) Primary Employer--The TDCJ shall be considered the primary employer for all full-time employees.

(3) Secondary Employer--For an employee [employees] whose primary employer is the TDCJ, the secondary employer is the other state agency to which the employee is [they are] applying [for] or has received approval for multiple employment.

(c) Procedures.

(1) Conditions [Qualifications]. The following conditions must be met in [in] order for multiple employments [employment] with the state to be approved: [a conflict of interest must not exist between the office of or position with the primary employer and the secondary employer. The proposed multiple employment must be of benefit to the TDCJ and to the State of Texas. Multiple employment must not interfere with the performance of duties with the TDCJ. An employee may not work part-time for the TDCJ and full-time with another state agency. An employee's work hours or cycle shall not be changed to accommodate additional employment unless there is a clear benefit to the TDCJ.]

(A) A conflict of interest must not exist between the TDCJ office/position and the secondary employer;

(B) The proposed multiple employment must not interfere with the performance of duties with the TDCJ; and

(C) The proposed multiple employment must be of benefit to the TDCJ and to the State of Texas.

(2) Limitations.

(A) An employee may not hold more than one TDCJ position.

(B) An employee may not work part-time or full-time for the TDCJ and full-time with another state agency.

(C) An employee's work hours or cycle shall not be changed to accommodate additional employment unless there is a clear benefit to the TDCJ.

(3) [(2)] Application Procedures. The secondary employment shall not commence until it is approved by the Texas Board of Criminal Justice (Board). Approval shall be valid only while the employee remains in the TDCJ position held at the time of the request was approved and in the approved position with the secondary employer. If an employee changes positions or work schedule within the TDCJ or with the secondary employer, a new request and Board approval shall be required. The TDCJ shall establish a procedure for requests to be submitted and processed.

(4) [(3)] Administration. Upon Board approval of multiple employments [employment], the Payroll Department shall coordinate with the additional state agency payroll department to ensure that there is an official record of Board approval and of the compensation to be



received by the employee, including salary, bonus, per diem, or other types of compensation, and compliance with [the] provisions of applicable state law [the current General Appropriations Act].

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 September 24, 2004.

TRD-200405891

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 463-0422



## CHAPTER 159. SPECIAL PROGRAMS

### 37 TAC §159.3

The Texas Board of Criminal Justice proposes to amend §159.3, concerning Continuity of Care System for Offenders with Mental Impairments/Memorandum of Understanding. The purpose of the amendment is to clarify the Memorandum of Understanding between the Texas Department of Criminal Justice, the Texas Health and Human Services Commission, Community Mental Health/Mental Retardation Authorities/Centers, and the Community Supervision and Corrections Departments concerning a continuity of care system for offenders with mental illness or mental retardation.

Brad Livingston, Chief Financial Officer for TDCJ, has determined that for the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government.

Mr. Livingston has also determined that for the first five years the rule will be in effect the anticipated public benefit as a result of enforcing the rule will be to enhance public safety. There will be no economic impact on persons required to comply with the rule. There will be no effect on small and micro-businesses.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084,

Austin, Texas 78711, Carl.Reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Health and Safety Code, §614.013.

Cross Reference to Statutes: Texas Health and Safety Code, §614.013.

*§159.3. Continuity of Care System for Offenders with Mental Impairments/Memorandum of Understanding.*

(a) The Texas Department of Criminal Justice (TDCJ) adopts [by reference 25 TAC §401.59(a) as Exhibit P,] a memorandum of understanding (MOU) between the Texas Department of Criminal Justice, the Texas Health and Human Services Commission, [Department of Mental Health and Mental Retardation and] Community Mental Health/Mental Retardation Authorities/Centers, and Community Supervision and Corrections Departments concerning a continuity of care system for offenders with mental illness or mental retardation, as required by the Texas Health and Safety Code, §614.013.

(b) Copies of the MOU are filed in offices of the [Office of Policy Development, Texas Department of Mental Health and Mental Retardation, 4405 North Lamar, Austin, Texas 78756, and the] Texas Correctional Office [Council] on Offenders with Mental Impairments, 8610 Shoal Creek Boulevard, Austin, Texas 78757, and may be reviewed during regular business hours.

Figure: 37 TAC §159.3

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 September 24, 2004.

TRD-200405892

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: November 7, 2004

For further information, please call: (512) 463-0422



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 22. EXAMINING BOARDS

### PART 10. TEXAS FUNERAL SERVICE COMMISSION

#### CHAPTER 209. ETHICAL STANDARDS FOR PERSONS LICENSED BY THE COMMISSION

##### 22 TAC §209.1

The Texas Funeral Service Commission has withdrawn from consideration the proposed new §209.1 which appeared in the June 25, 2004, issue of the *Texas Register* (29 TexReg 6028).

Filed with the Office of the Secretary of State on September 27, 2004.

TRD-200405914  
O.C. "Chet" Robbins  
Executive Director  
Texas Funeral Service Commission  
Effective date: September 27, 2004  
For further information, please call: (512) 936-2466



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

#### CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

##### SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

##### 22 TAC §523.144

The Texas State Board of Public Accountancy has withdrawn from consideration the proposed repeal to §523.144 which appeared in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7251).

Filed with the Office of the Secretary of State on September 22, 2004.

TRD-200405855  
Rande Herrell  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: September 22, 2004  
For further information, please call: (512) 305-7848



##### 22 TAC §523.144

The Texas State Board of Public Accountancy has withdrawn from consideration the proposed new to §523.144 which appeared in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7251).

Filed with the Office of the Secretary of State on September 22, 2004.

TRD-200405854  
Rande Herrell  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: September 22, 2004  
For further information, please call: (512) 305-7848



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### CHAPTER 251. REGIONAL PLANS--STANDARDS

##### 1 TAC §251.10

The Commission on State Emergency Communications (CSEC) adopts an amendment to §251.10, concerning proposed guidelines for implementing wireless E9-1-1 services funded with 9-1-1 funds in regional plan areas, with changes to the proposed text as published in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6853).

The amendments are adopted for consistency of language and format with other CSEC rules, to remove definitions that will be part of the definitions in §251.14, to simplify procedures, to remove implementation instructions that will be provided in Program Policy Statements, to remove parts of the rule that are no longer necessary, and to define "WPH2" as a class of service. See 29 TexReg at 6853-54.

The amendments are adopted as part of a rule review of Chapter 251 pursuant to Government Code, §2001.039. The rule continues to be essential to the CSEC's operations.

CSEC received comments from Cingular Wireless ("Cingular") regarding adoption of the amendments and on the rule review of §251.10. Cingular generally commented that in the rule CSEC should refer to and incorporate Texas Health and Safety Code Ann. §771.0711(g). This part of the statute provides:

(g) On receipt of an invoice from a wireless service provider for reasonable expenses for network facilities, including equipment, installation, maintenance, and associated implementation costs, the commission or an emergency services district of a home-rule municipality or an emergency communication district created under Chapter 772 shall reimburse the wireless service provider in accordance with state law for all expenses related to 9-1-1 service.

CSEC disagrees and rejects Cingular's general comment. A rule is a statement of general applicability that implements, interprets, or prescribes law or policy, Texas Government Code Ann. §2001.003(7). Subsection (c)(8), (c)(13), and (c)(14) of §251.10 implement, interpret, and prescribe law or policy related to §771.0711(g) for regional plan areas. A mere reference or incorporation of the statutory language in the rule would serve no additional purpose.

Cingular also commented that the deletion of the proposed Wireless Service Provider (WSP) reasonable costs from the Commission Survey and Review information in subsection (c)(1) of the rule leaves the impression that "the Texas reimbursement provision does not exist." Cingular urges that the deletion not be adopted, and, alternatively, urges that if the language is deleted, §771.0711(g) be referenced in the rule. CSEC disagrees and rejects this comment. CSEC deleted this portion of the rule to indicate that the cost information need not be submitted simultaneously with the technical information for implementing wireless E9-1-1 in the CSEC survey information. The requirement for any WSP cost information still remains in subsection (c)(13) of the rule. CSEC rejects Cingular's alternative request to reference §771.0711(g) in the rule for the reasons explained above in response to Cingular's general comment.

Cingular further commented that "ignoring the Texas statutory reimbursement provision" (i.e., §771.0711(g)) while referencing FCC Rule 20.18(j) in subsection (c)(2) on triggering a WSP obligation to provide the service exceeds CSEC's statutory authority and violates wireless service providers' property rights. Cingular urges that in addition to the proposed language regarding the FCC rule, CSEC reference §771.0711(g) in the rule. CSEC disagrees and rejects this comment. As explained above, subsection (c)(8), (c)(13), and (c)(14) of the rule implement, interpret, and prescribe law or policy related to §771.0711(g) for regional plan areas on issues, including the reimbursement of reasonable expenses.

Cingular also commented on the additional language proposed to be added to subsection (c)(3) that "[r]equests for Phase II service shall be consistent with Commission policy and other applicable requirements." Cingular expresses concern that "Commission policy" and "other applicable requirements" are vague and not defined. Cingular also objects to the deletion of the instructions provided in subparagraphs (A)-(E) for similar reasons and urges that CSEC detail within the rule the particular requirements. Cingular also asks for a detailed explanation of why CSEC proposes to remove subparagraphs (A)-(E) of the rule. This portion of the rule applies to actions to be taken by the regional planning commissions. CSEC agrees that the terms "Commission Policy" and "other applicable requirements" would benefit by further clarification on these regional planning commission requirements. As CSEC explained in the preamble to the proposed amendment:

Subsection (c)(3) has been revised to remove Phase II implementation instructions to RPCs. These instructions shall be provided to the RPCs in a Program Policy Statement (PPS), to be presented to the Commission at the July 17, 2004 meeting.

29 TexReg at 6853. Accordingly, to clarify the language in response to Cingular's comment CSEC adds "in Program Policy

Statements" after term "Commission policy" (to now read "Commission policy in Program Policy Statements"). The other applicable requirements were intended to be the FCC rule requirements applicable to requesting the service. CSEC also clarifies the language in response to Cingular's comment by adding "FCC" after the word "applicable" in "other applicable requirements" (to now read "other applicable FCC requirements").

Cingular's final comment on §251.10 related to the existing language in subsection (c)(8)(A) and (B) of the rule, which designates some specific items that CSEC may consider as reasonable expenses. Cingular urges that additional changes are necessary given Phase II service implementation in some of the regional planning commission areas. Cingular urges that subsection (c)(8) should be amended to identify costs items associated with Phase II service. CSEC disagrees and rejects this comment. The rule language in subsection (c)(8)(A) and (B) does not limit CSEC's review for reimbursement of reasonable expenses, including the comparable costs review, only to the items noted in subsection (c)(8)(A) and (B) of the rule. CSEC believes that subsection (c)(8), (c)(13), and (c)(14) of the rule sufficiently implement, interpret, and prescribe law or policy related to §771.0711(g) for regional plan areas on issues, including the issue of reimbursement for reasonable expenses.

The amendment is adopted and the rule is re-adopted under 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, provide provisions and the enhancement of effective and efficient 9-1-1 service.

*§251.10. Guidelines for Implementing Wireless E9-1-1 Service.*

(a) Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in §251.14 of this title (relating to General Provisions and Definitions).

(b) Purpose. The purpose of this rule is to establish standards and procedures for regional planning commissions (RPCs) and wireless service providers (WSPs) for the implementation of wireless E9-1-1 services.

(c) Standards and Procedures. Prior to the Commission considering allocation and expenditure of 9-1-1 funds for implementation of wireless Phase I and/or Phase II wireless E9-1-1 services, the following applicable requirements listed in paragraphs (1) - (14) of this subsection shall be met :

(1) Commission Survey and Review--Prior to any wireless E9-1-1 Service implementation in any RPC area, the Commission shall solicit in writing from each WSP within the area a detailed description of its technical approach to implementing Phase I and/or Phase II. The Commission will review and evaluate this information and consider its appropriateness for implementation. Upon completion of this process, the Commission will communicate these WSP evaluations to the RPCs and notify the RPCs that they may request and implement wireless E9-1-1 service as described in paragraphs (2) - (14) of this subsection.

(2) Phase I E9-1-1 Implementation--The provisioning for delivery of a caller's mobile directory number and the location of a cell site receiving a 9-1-1 call to the designated PSAP. Implementation of Phase I service must be accomplished within 6-months of written request (unless extended by written agreement between CSEC, RPC, and WSP) or according to the FCC Order. As ordered by the Federal

Communications Commission (FCC), a mechanism for WSP cost recovery does not have to be in place before a WSP's obligation to provide E9-1-1 services is triggered. See, FCC Rule 20.18(j). Prior to requesting Phase I wireless E9-1-1 service, the following conditions must be satisfied and demonstrated to the Commission as described in paragraph (14) of this subsection:

(A) The RPC requesting service has determined, based on reasonable investigation, that it currently has sufficient funds to cover the costs of receiving and utilizing the wireless E9-1-1 Phase I information;

(B) The PSAP(s) administered by the RPC is capable of receiving and using the data associated with such service or has ordered the necessary equipment and has commitments from its supplier(s) that PSAP(s) will be capable within 6 months of the request to WSP;

(C) Demonstrate, as applicable, that it has made a timely request to the 9-1-1 Network Provider and/or ALI Host Database Provider, as applicable and necessary, for any upgrades needed for the PSAP to receive and use the wireless E9-1-1 Phase I information;

(D) The RPC and WSP both accept the roles and responsibilities in the implementation of wireless E9-1-1 service as provided in Attachment 1 of the standard Wireless E9-1-1 Service Agreement;

(E) If the Commission or Commission Staff makes the request to the WSP for Phase I service on behalf of the RPC or approves in writing the RPC's request to the WSP for Phase I service, then the RPC shall be deemed in compliance by the Commission with subparagraphs (A) and (C) of this paragraph for the purposes of this rule.

(F) A WSP expanding its service area with an RPC county shall not require a new request from the RPC; rather, the prior request shall cover all parts of the county within the RPC.

(3) Phase II E9-1-1 Implementation--Provisioning for delivery of a caller's mobile directory number and the caller's location, within or exceeding the level of accuracy required by the FCC, to the designated PSAP. Implementation of Phase II service will be consistent with the FCC Order and with Commission policy in Program Policy Statements. Requests for Phase II service shall be consistent with Commission policy in Program Policy Statements and other applicable FCC requirements

(4) Responsibilities--It shall be the responsibility of the RPC, the WSP and any necessary third party (including, but not limited to, 9-1-1 Network Provider/Local Exchange Carrier, Host ALI Provider, SCP software developers and hardware providers, and other suppliers and manufacturers) to fully cooperate for the successful implementation and provision of Phase I and Phase II E9-1-1 service. These same parties should also expend good faith efforts to make their wireless E9-1-1 solution interoperable with other wireless E9-1-1 solutions, including permitting the proper and seamless transfer of wireless E9-1-1 emergency call information to PSAPs between differing wireless E9-1-1 solutions. The Commission acknowledges that the successful and timely provision of such service is dependent upon the timely and effective performance and cooperative, good faith efforts of all of the parties listed in this section. All parties shall comply with the FCC Order, other FCC guidelines and requirements related to wireless E9-1-1 service, Texas laws and Commission Policies and Rules.

(5) Deployment--Unless otherwise approved by the Commission or Commission Staff as an exception, the RPC and the WSP will agree upon one, or a combination, of the following methods of wireless call delivery listed in subparagraphs (A) - (D) of this paragraph:

- (A) Call Associated Signaling (CAS);
- (B) Non-Callpath Associated Signaling (NCAS);
- (C) Hybrid CAS/NCAS Architecture; and

(D) Exceptions to CAS, NCAS, or Hybrid CAS/NCAS, as in the case of stand alone ALI environments--specific solution should be illustrated and demonstrated prior to execution of contract.

(6) Data Delivery-- Methods for the delivery of necessary voice and data elements shall be evaluated by the Commission as part of the review of the WSP's technical information as described in paragraph (1) of this subsection. The RPC and WSP shall provision for redundancy within all methods.

(7) Standards--Unless an exception is approved by the Commission, the RPC, the WSP and any third party/vendor, will ensure that all appropriate and applicable industry standards be adhered to in provisioning E9-1-1 wireless service. These standards shall include, but not be limited to:

(A) J-Std 34 and NENA 03-002 for CAS and Hybrid CAS/NCAS deployments;

(B) NENA 02-010 as benchmark data standards. All parties shall cooperate fully in the development and maintenance of all wireless data, such as cell site locations, emergency service routing numbers, selective routing databases, and timely updates of any such data;

(C) Any and all modifications to these standards, currently under development by appropriate standards bodies, for CAS, NCAS, Hybrid CAS/NCAS, and Phase II/LDT deployments. Any such pending standard should be adhered to upon adoption;

(D) The Commission hereby establishes a standard Class of Service (COS) to be used by the RPC's PSAPs and the WSPs to identify calls delivered to the PSAP as WRLS (for wireless Phase I) and WPH2 (for wireless Phase II);

(E) Commission §251.4 of this title (relating to Guidelines for the Provisioning of Accessibility Equipment) for provisioning of TTY/TDD equal access consistent with FCC rules and orders;

(F) All applicable standards shall be agreed upon by both parties to the standard Wireless E9-1-1 Service Agreement; and

(G) The Commission may approve exceptions to the above standards upon demonstration by the WSP and the RPC of valid reasons and comparable efficiency and cost.

(8) Reasonable Cost Elements--The Commission will consider that the costs to be incurred by the RPC will be reviewed and approved within the existing Strategic Planning process and provided within CSEC §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Revenue Allocation). The Commission will consider that the reasonable costs incurred by the WSP to be reimbursed by the 9-1-1 Governmental Entity may include the following listed in subparagraphs (A) - (C) of this paragraph:

(A) Trunking--To provide network connectivity between the necessary network elements, the following costs listed in clauses (i) - (iii) of this subparagraph may be allowed:

(i) Dedicated transport from mobile switching center (MSC) to selective router at a rate and quantity no higher than agreed to within the standard Wireless E9-1-1 Service Agreement and as approved as reasonable by the Commission, Commission Staff or Commission rule;

(ii) From mobile switching center (MSC) to service control point (SCP) at a rate and quantity no higher than agreed to within the standard Wireless E9-1-1 Service Agreement and as approved as reasonable by the Commission, Commission Staff or Commission rule; and

(iii) From service control point (SCP) to ALI Database at a rate and quantity no higher than agreed to within the standard Wireless E9-1-1 Service Agreement and as approved as reasonable by the Commission, Commission Staff or Commission rule.

(B) Database--To provision and deliver the necessary data through the network and to the PSAP for Phase I compliance, the following costs listed in clauses (i) - (ii) of this subparagraph may be allowed:

(i) Non-recurring costs associated with initial emergency service routing digits (ESRD) or emergency service routing keys (ESRK) load into selective router or SCP at a rate and quantity no higher than agreed to within the standard Wireless E9-1-1 Service Agreement and as approved as reasonable by the Commission, Commission Staff, or Commission rule; and

(ii) Monthly recurring costs associated with maintaining ESRD or ESRK data in the selective router or SCP at a rate and quantity no higher than agreed to within the standard Wireless E9-1-1 Service Agreement and as approved as reasonable by the Commission, Commission Staff, or Commission rule.

(C) Comparable Costs--In determining the reasonableness of costs, the Commission or Commission Staff may compare the costs being submitted for recovery by one provider to the costs of other, similarly situated providers.

(9) Testing--The RPC, WSP, local service provider and any third party shall conduct initial and regularly scheduled network, database and equipment testing to ensure the integrity of the existent and proposed wireline/wireless 9-1-1 system operated by the RPC, for any Phase I and/or Phase II wireless E9-1-1 service deployment. These tests shall include, at a minimum:

(A) Network connectivity;

(B) Equipment capabilities of receiving and displaying callback number and cell site/sector information;

(C) Ability to transfer the wireless E9-1-1 call;

(D) Initial implementation field testing of each of a WSP's cell sites routing to the designated PSAP and delivery of accurate call data; and

(E) The routing and database delivery ability and accuracy of any new cell sites or maintenance sites, that may be added by a WSP in any particular region. The RPC shall submit the initial testing documentation and findings to the Commission as established through Commission wireless testing policies and procedures that comply with and supplement FCC guidelines. The RPC shall maintain documentation of initial, maintenance and regularly scheduled testing and notify the Commission of any on-going, negative outcomes.

(10) Fair and Equitable Provisioning of Wireless E9-1-1 Service--The RPC, WSP, local service provider, and any relevant third party shall provision E9-1-1 service in the RPC region as to achieve a consistent level of service to WSP End Users that is in compliance with applicable federal and state laws and rules and applicable industry standards.

(11) Uninitialized Calls--Must be passed through the wireless 9-1-1 network and uniformly identified to the PSAP, in accordance with rules and procedures established by the FCC.

(12) Third Party Contracts--Any and all subcontracts between WSP and third party vendors, for the deployment of Phase I & II wireless E9-1-1 service deployments, shall adhere to the primary contract as executed between RPC and WSP, and the applicable FCC Orders, Guidelines and Rules.

(13) Proposals for Wireless E9-1-1 Service--All proposals by WSPs for wireless 9-1-1 service should be presented to the RPC in writing and shall include a complete description of network, database, equipment display requirements, training and accessibility elements. Such proposals should include detailed cost information, as well as technical solutions, network diagrams, documented wireless 9-1-1 call set-up times, deployment plans and timelines, specific work plans, WSP network contingency and disaster recovery plans, escalation lists, trouble call response times, as well as any other information required by the RPC. Unless otherwise confidential by law, all information provided to the RPC becomes a matter of public record and is subject to the Texas Public Information Act.

(14) Execution of Standardized Wireless E9-1-1 Service Agreement--Upon review and approval by the Commission, Commission Staff, or Commission rule, the RPC and WSP shall enter into a standardized Wireless E9-1-1 Service Agreement. The standard agreement shall include all of the information contained in the proposal and amendments reviewed and approved by the Commission. Commission staff shall review all such agreements before they are executed, amended, or renewed. RPC shall provide the Commission a copy of all fully executed agreements.

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 September 27, 2004.

TRD-200405901

Paul Mallett

Executive Director

Commission on State Emergency Communications

Effective date: October 17, 2004

Proposal publication date: July 16, 2004

For further information, please call: (512) 305-6933



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 354. MEDICAID HEALTH SERVICES

#### SUBCHAPTER A. PURCHASED HEALTH SERVICES

#### DIVISION 25. SCHOOL HEALTH AND RELATED SERVICES

##### 1 TAC §354.1341

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §354.1341, concerning the delivery of School Health and Related Services (SHARS). The amended rule is adopted with changes to the proposed text as published

in the March 26, 2004, issue of the *Texas Register* (29 TexReg 2979). The text of the rule will be republished.

The amended rule §354.1341 adds language to clarify that services may be delivered in an individual or group setting by the licensed or certified clinician. Additionally, the amendment allows for Registered Nurse (RN) and Licensed Vocational Nurse (LVN) services, medication administration, nursing services delegated by an RN to unlicensed personnel, personal care services, and activities.

HHSC received one comment regarding the proposed rule during the public comment period. A summary of the comment and HHSC's response follows:

**Comment:** An HHSC staff member recommended that references to transportation aides be removed, since the reference to personal care services entails assistance in all forms.

**Response:** HHSC acknowledges the recommendation and agrees with the commenter. The references to "transportation aides" have been deleted from the adopted rule.

The amendment is adopted under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

##### §354.1341. *Benefits and Limitations.*

(a) Subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission (HHSC) or its designee, school health and related services are those health and related services performed on or after January 1, 1991, that are determined to be medically necessary and reasonable to ensure a Medicaid-eligible student with a disability under age 21 receives the benefits accorded to him or her by federal and state legislation guaranteeing a free and appropriate public education.

(b) School health and related services must be prescribed in the student's approved individual education program (IEP) as required by the Texas Education Code, §21.501(7), and implemented through State Board of Education regulations (Texas Administrative Code, Title 19, Part 2, Chapter 89, §§89.221-89.224).

(c) School health and related services are to be delivered in the least restrictive environment consistent with the nature of the specific service(s) and the physical and mental condition of the student.

(d) School health and related services may include, but are not necessarily limited to:

(1) audiology, individual and group delivered by licensed/certified therapist or licensed/ certified assistant;

(2) counseling, individual and group delivered by licensed/certified therapist;

(3) medical services;

(4) occupational therapy, individual and group delivered by licensed/certified therapist or licensed/ certified assistant;

(5) physical therapy, individual and group delivered by licensed/certified therapist or licensed/ certified assistant;

(6) psychological services;

(7) speech therapy, individual and group delivered by licensed/certified therapist or licensed/ certified assistant;

(8) assessment;

(9) school health services, including Registered Nurse (RN) services, medication administration, nursing services delegated by an RN (in compliance with RN delegated nursing tasks criteria as determined by the Board of Nurse Examiners) to an employee or health aide; and

(10) special transportation services), including personal care services; and

(11) personal care services.

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

Filed with the Office of the Secretary of State on September 27, 2004.

TRD-200405906

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: October 17, 2004

Proposal publication date: March 26, 2004

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



## CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

### DIVISION 16. SCHOOL HEALTH AND RELATED SERVICES

#### 1 TAC §355.8301

The Health and Human Service Commission (HHSC) adopts the amendment to §355.8301, relating to Reimbursement for School Health and Related Services (SHARS). The rule is adopted with changes to the proposed text as published in the March 26, 2004, issue of the *Texas Register* (29 TexReg 2979). The text of the rule will be republished.

The originally proposed changes to this rule added reimbursement methodologies for: (1) services provided in group settings (e.g., counseling, physical therapy, occupational therapy, and school health services), (2) services provided by licensed/certified assistants (e.g., Licensed Physical Therapist Assistants and Certified Occupational Therapist Assistants), (3) school health services provided by a Licensed Vocational Nurse (LVN) or Licensed Practical Nurse (LPN), (4) school health services provided by a trained, unlicensed assistive person through delegation by a Registered Nurse (RN), and (5) personal care services.

In addition to the originally proposed changes, the adopted rule §355.8301 bases the rate calculation for each covered service on the mean rather than the median cost per unit of service. Additionally, the adopted rule changes the unit of service for specialized transportation from a student roundtrip to a student one-way trip. These changes were made in response to comments received during the public comment period.

During the public comment period, HHSC received comments from two provider billing agencies (Texas State Billing Services, Inc., and the Texas Association of School Boards), one provider (Austin Independent School District), and the Texas Education Agency. A public hearing was held on April 14, 2004. A summary of comments and HHSC's responses follows.

**Comment:** Texas State Billing Services, Inc., and the Texas Association of School Boards recommended that the rates be calculated using the mean cost of service in order to, better approximate the actual cost of providing services and to provide additional revenue to the school districts without adding cost to the state.

**Response:** HHSC acknowledges the recommendation and agrees to calculate the rates for each SHARS service using the mean cost per unit of service rather than the median. The state projects that this change will result in approximately \$3.5 million in increased federal funding to the schools. The estimated \$2.3 million state funding associated with this change is certified by the school districts through their expenditure of state and local funds to deliver these services, resulting in no increased costs to the state. The adopted rule has been amended to calculate the rates using the mean cost per unit of service.

**Comment:** Austin Independent School District and the Texas Education Agency commented that unit of service for specialized transportation should be changed from a student roundtrip to a student one-way trip. The commenters stated that some students do not receive a daily roundtrip. Student one-way trips cannot be accumulated across multiple days in order to bill for a student roundtrip. The change to a student one-way trip as the unit of service for specialized transportation would allow providers to be reimbursed for those one-way trips.

**Response:** HHSC agrees and the rule has been amended to reflect a student one-way trip as the unit of service for specialized transportation.

The amendment is adopted under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

#### §355.8301. *Reimbursement.*

(a) The Health and Human Services Commission (HHSC) or its designee reimburses enrolled providers for providing school health and related services to Medicaid-eligible students with disabilities. HHSC or its designee calculates reimbursement rates at least once every five years for school health and related services (SHARS), with adjustments made for inflation annually for those years when reimbursement rates are not calculated. These rates are:

(1) prospective; and

(2) cost related.

(b) Basis for rate analysis.

(1) Because the services named in §354.1341(d)(1)-(9) of this title (relating to Benefits and Limitations) were comparable to those included in §621.23(5)(C)-(E) of Title 25 (relating to Service Delivery Requirements for Comprehensive Services) for the Early Childhood Intervention (ECI) program, initial rates were derived from

data collected as a part of the ECI program ratesetting process prior to October 1, 1994.

(2) For subsequent periods, HHSC or its designee will collect cost data from a representative sample of providers as reported to the Texas Education Agency (TEA) through the Public Education Information Management System (PEIMS), the Foundation School Program (FSP), the Medicaid Administration Claims (MAC) program, and/or other auditable sources. These data contain the direct costs associated with delivery of SHARS, the indirect program costs associated with service delivery, and general and administrative costs associated with the management of the facility and program.

(3) The costs from the historical cost-reporting period are adjusted to the prospective rate period using reasonable and appropriate methods for projecting costs as determined by HHSC or its designee. HHSC or its designee may utilize a general cost inflation index obtained from a reputable independent professional source and, where HHSC or its designee deems appropriate and pertinent data are available, develop and/or utilize several cost-specific and program-specific inflation indices, as follows.

(A) HHSC or its designee utilizes the Implicit Price Deflator (IPD) for Government Consumption Expenditures and Gross Investment for State and Local Governments as the general cost inflation index.

(B) HHSC or its designee may use specific indices in place of the general cost inflation index specified in subparagraph (A) of this paragraph when appropriate cost-specific or program-specific cost indices are available. The specific indices that HHSC or its designee may use include, but are not limited to, the following:

(i) Federal Insurance Contributions Act (FICA) or Social Security taxes, including Old Age, Survivors, and Disability Insurance (OASDI) and Medicare taxes, are set by federal statute. The inflation rate for these taxes is the average tax rate, or average tax per payroll dollar, during the prospective reimbursement period divided by the average tax rate, or average tax per payroll dollar, during each provider's reporting period.

(ii) The unemployment tax inflation index is based on unemployment insurance payroll taxes in accordance with the Federal Unemployment Tax Act (FUTA) and the Texas Unemployment Compensation Act (TUCA) rates and is the average tax rate during the prospective reimbursement period divided by the average tax rate during each provider's reporting period.

(iii) Inflation factors for salaries of clinicians, certified/licensed assistants, school health aides, and personal care attendants are based on wage survey data pertaining to specific types of staff in Texas when HHSC or its designee has determined that reliable data of this kind are available for specific services.

(4) Providers participating in the MAC program are required to provide quarterly time study information. The information includes time information for clinicians, certified/licensed assistants, and school health aides delivering the following SHARS: audiology, counseling, occupational therapy, physical therapy, psychological services, speech therapy, assessment and school health services. Costs for these services are properly allocated to each unit of service based upon the results of the MAC program quarterly time study information, resulting in a cost per unit of service for each district for each of the listed services. Other personnel delivering SHARS who are not required to provide quarterly time study information for the MAC program (e.g., personal care attendants) will be required to provide time study information for one quarter for the calculation of reimbursement rates for services provided by them.

(A) For services provided in an individual setting by the licensed or certified clinician, the cost per unit of service for each type of clinician is arrayed from low to high, with the mean cost per unit of service selected as the recommended rate for that service. For services provided in an individual setting by a licensed or certified assistant, the cost per unit of service for each type of licensed or certified assistant is arrayed from low to high, with the mean cost per unit of service selected as the recommended rate for that service.

(B) For services provided in a group setting by the licensed or certified clinician, the recommended rate for the service provided by the licensed or certified clinician in an individual setting is divided by the average number of clients in a group, based on a study of a representative sample of the services provided in group settings. For services provided in a group setting by a licensed or certified assistant, the recommended rate for the service provided by the licensed or certified assistant in an individual setting is divided by the average number of clients in a group, based on a study of a representative sample of the services provided in group settings.

(C) For school health services, recommended rates are calculated for services provided in an individual or group setting by a Registered Nurse (RN), a Licensed Vocational Nurse (LVN) or a Licensed Practical Nurse (LPN), and by an unlicensed person to whom the task has been properly delegated by an RN in accordance with Subparagraphs A and B of this paragraph.

(D) Medication administration will be reimbursed either under school health services as a service provided by an RN, LVN or LPN, or unlicensed person to whom the task has been properly delegated by an RN or under a separate reimbursement rate calculated per dose as a percentage of the recommended rate for services provided by an RN, LVN or LPN, or unlicensed person to whom the task has been properly delegated by an RN, depending on the service requirements of the student. The initial percentage effective September 1, 2004, is 20%, based on a time study of the length of time required by RNs to administer medication by dose.

(5) Since time for medical services staff is not covered by the MAC program quarterly time study information and since most of these services are delivered by contracted staff, the recommended rate per unit of service is based on a survey of the average cost per provider per unit of service for these services. The average cost per provider per unit of service is arrayed from low to high, with the mean cost per unit of service selected as the recommended rate for medical services.

(6) Reimbursement for special transportation services is based on a rate per student one-way trip, with student one-way trip being defined as one Medicaid-eligible student requiring special transportation services, picked up from home or school and delivered to a location where an approved Medicaid service is provided or picked up from a location where an approved Medicaid service is provided and delivered to home or school. The recommended rate for special transportation services is primarily based upon costs and statistics reported by districts in the FSP report. The costs per district per student round trip is calculated and arrayed from low to high, with the mean cost per unit of service selected as the recommended rate per student one-way trip for special transportation services.

(c) Unallowable costs are defined as those expenses incurred by a provider that are neither directly or indirectly related to the provision of contracted services according to applicable laws, rules, and standards. Unallowable costs are not used in calculating recommended rates. Providers have the right to notice of exclusions and disallowances made during the conduct of desk reviews or on-site audits of the costs, statistics, time study information and any other information used in the calculation of reimbursement rates for school health and related



services. Providers may request an informal review and, if necessary, an administrative hearing of any exclusion or disallowance taken by HHSC or its designee during the conduct of desk reviews or on-site audits.

(d) HHSC or its designee may adjust reimbursement rates for SHARS when federal or state laws, rules, regulations, policies, or guidelines are adopted, promulgated, judicially interpreted, or otherwise changed in ways that can reasonably be expected to effect allowable costs. HHSC or its designee may also adjust reimbursement rates when changes in economic factors significantly affect allowable costs. Any of these adjustments may result in increases or decreases in the reimbursement rates.

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 September 27, 2004.

TRD-200405905  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Effective date: October 17, 2004  
Proposal publication date: March 26, 2004  
For further information, please call: (512) 424-6900



## **TITLE 4. AGRICULTURE**

### **PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST**

#### **CHAPTER 61. COMMERCIAL FEED RULES**

##### **SUBCHAPTER J. ADMINISTRATIVE HEARINGS**

###### **4 TAC §61.91**

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist adopts the addition of a new Subchapter J, Administrative Hearings, to TAC Title 4, Part 3, Chapter 61 of the Texas Commercial Feed Rules, §61.91 Cost of Preparing Agency Record, without changes to the proposed text as was published in the May 21, 2004 issue of the *Texas Register* (29 TexReg 5011).

The new subchapter will ensure the Service's conformity to the Texas Rules of Civil Procedure.

The new rule will clarify the Service's policy for dealing with appeals of contested cases and align that policy with Title 1 §2001.177 Administrative Procedures Act.

Only one comment in support of the proposal was received from the Texas Poultry Federation. There were no comments against.

The new rule is adopted under Texas Agriculture Code 141, §141.004 which provides Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial feeds.

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 September 24, 2004.

TRD-200405883  
Dr. George W. Latimer, Jr.  
State Chemist  
Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist  
Effective date: October 14, 2004  
Proposal publication date: May 21, 2004  
For further information, please call: (979) 845-1121



## **CHAPTER 65. COMMERCIAL FERTILIZER RULES**

### **SUBCHAPTER E. INSPECTION, SAMPLING, AND ANALYSIS**

#### **4 TAC §65.51**

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist adopts the amendment of TAC Title 4, Part 3, §65.51(a), concerning reference to the 16th edition of the Official Methods of Analysis of AOAC International without changes to the proposed text as published in the May 21, 2004, issue of the *Texas Register* (29 TexReg 5012).

The amendment to the rule is so that the Service will be able to take advantage of more accurate methods of analyzing fertilizers.

Only one comment in support of the proposal was received from the Texas Poultry Federation. There were no comments against the proposed amendment.

The amendment is adopted under Texas Agriculture Code, Chapter 63, §63.004 which provides Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial fertilizers.

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 September 24, 2004.

TRD-200405885  
Dr. George W. Latimer, Jr.  
State Chemist  
Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist  
Effective date: October 14, 2004  
Proposal publication date: May 21, 2004  
For further information, please call: (979) 845-1121



### **SUBCHAPTER F. ADMINISTRATIVE HEARINGS**

#### 4 TAC §65.91

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist adopts the addition of a new Subchapter F, Administrative Hearings, to TAC Title 4, Part 3, Chapter 65 of the Texas Commercial Fertilizer Rules, §65.91, concerning Cost of Preparing Agency Record, with changes to the proposed text as published in the May 21, 2004, issue of the *Texas Register* (29 TexReg 5012). The only change is editorial. There was a typographical error made when the rule was proposed. In subsection (b), the wording in the proposal was "Texas Rules or Civil Procedure" and it should have been "Texas Rules of Civil Procedure." A Correction of Error was published in the June 18, 2004, issue of the *Texas Register* (29 TexReg 5961).

The new subchapter will ensure the Service's conformity to the Texas Rules of Civil Procedure.

The new rule will also clarify the Service's policy for dealing with appeals of contested cases and align that policy with Title 1 §2001.177 Administrative Procedures Act.

Only one comment was received in support of the proposal from the Texas Poultry Federation. There were no comments against.

The new rule is adopted under Texas Agriculture Code, Chapter 63, §63.004 which provides Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial fertilizers.

#### §65.91. *Cost of Preparing Agency Record.*

(a) The Service requires that a party who appeals a final decision in a contested case pay all of the costs associated with preparation of the original or certified copy of the record of the agency's proceedings that is required to be sent to the reviewing court.

(b) A charge imposed under subsection (a) of this section is a court cost and shall be assessed by the court in accordance with the Texas Rules of Civil Procedure.

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 September 24, 2004.

TRD-200405886

Dr. George W. Latimer, Jr.  
State Chemist

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Effective date: October 14, 2004

Proposal publication date: May 21, 2004

For further information, please call: (979) 845-1121



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION

## CHAPTER 170. REVENUE BONDS FOR DEVELOPMENT OF EMPLOYMENT-- INDUSTRIAL AND HEALTH RESOURCES SUBCHAPTER A. GENERAL RULES

### 10 TAC §§170.1 - 170.6

The Office of the Governor, Economic Development and Tourism Division, adopts the repeal of Chapter 170, Subchapter A, §§170.1 - 170.6, concerning General Rules, setting forth rules for Revenue Bonds for Development of Employment--Industrial and Health Resources. The repeal is adopted without changes to the proposal as published in the June 25, 2004, issue of the *Texas Register* (29 TexReg 5989).

The rules are being repealed because they are out of date, the program is not currently active, and the repeal will allow for the development of new rules in the future.

No comments were received regarding the proposed repeal.

The repeal is adopted under the Texas Government Code, §481.005(d), which authorizes the director of the Division to adopt rules for programs administered by the Division, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

Texas Government Code, Chapter 1433, is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 20, 2004.

TRD-200405795

Jeff Moseley

Chief Executive Officer

Office of the Governor, Economic Development and Tourism Division

Effective date: October 10, 2004

Proposal publication date: June 25, 2004

For further information, please call: (512) 936-0181



## SUBCHAPTER B. INDUSTRIAL PROJECTS

### 10 TAC §§170.21 - 170.25

The Office of the Governor, Economic Development and Tourism Division, adopts the repeal of Chapter 170, Subchapter B, §§170.21 - 170.25, Industrial Projects, setting forth rules for Revenue Bonds for Development of Employment--Industrial and Health Resources. The repeal is adopted without changes to the proposal as published in the June 25, 2004, issue of the *Texas Register* (29 TexReg 5989).

The rules are being repealed because the program is not currently active, and the repeal will allow for the development of new rules in the future.

No comments were received regarding the proposed repeal.

The repeal is adopted under Texas Government Code, §481.005(d), which authorizes the director of the Division to adopt rules for programs administered by the Division, and

Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

Texas Government Code, Chapter 1433, is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 20, 2004.

TRD-200405796

Jeff Moseley

Chief Executive Officer

Office of the Governor, Economic Development and Tourism Division

Effective date: October 10, 2004

Proposal publication date: June 25, 2004

For further information, please call: (512) 936-0181



## SUBCHAPTER C. MEDICAL PROJECT

### 10 TAC §§170.31 - 170.35

The Office of the Governor, Economic Development and Tourism Division, adopts the repeal of Chapter 170, Subchapter C, §§170.31 - 170.35, Medical Project, setting forth rules for Revenue Bonds for Development of Employment--Industrial and Health Resources. The repeal is adopted without changes to the proposal as published in the June 25, 2004, issue of the *Texas Register* (29 TexReg 5990).

The rules are being repealed because they are out of date, the program is not currently active, and the repeal will allow for the development of new rules in the future.

No comments were received regarding the proposed repeal.

The repeal is adopted under Texas Government Code, §481.005(d), which authorizes the director of the Division to adopt rules for programs administered by the Division, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

Texas Government Code, Chapter 1433, is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 20, 2004.

TRD-200405797

Jeff Moseley

Chief Executive Officer

Office of the Governor, Economic Development and Tourism Division

Effective date: October 10, 2004

Proposal publication date: June 25, 2004

For further information, please call: (512) 936-0181



## CHAPTER 172. TEXAS RURAL ECONOMIC DEVELOPMENT PROGRAM

### 10 TAC §§172.1 - 172.10

The Office of the Governor, Economic Development and Tourism Division, adopts the repeal of Chapter 172, §§172.1 - 172.10, setting forth rules for the Texas Rural Economic Development Program. The repeal is adopted without changes to the proposal as published in the June 25, 2004, issue of the *Texas Register* (29 TexReg 5990).

The repeal of the rules is proposed because the authority for the program was repealed by Senate Bill 932 of the 75th Texas Legislature, effective September 1, 1997, and there are no longer any loans outstanding under the program.

No comments were received regarding the proposed repeal.

The repeal is adopted under Texas Government Code, §481.005(d), which authorizes the director of the Division to adopt rules for programs administered by the Division, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

Texas Government Code, Chapter 481, is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 20, 2004.

TRD-200405798

Jeff Moseley

Chief Executive Officer

Office of the Governor, Economic Development and Tourism Division

Effective date: October 10, 2004

Proposal publication date: June 25, 2004

For further information, please call: (512) 936-0181



## CHAPTER 185. RULES FOR TEXAS SMALL BUSINESS INDUSTRIAL DEVELOPMENT CORPORATION REVENUE BOND PROGRAMS

### 10 TAC §§185.1 - 185.7

The Office of the Governor, Economic Development and Tourism Division, adopts the repeal of Chapter 185, §§185.1 - 185.7, setting forth rules for the Texas Small Business Industrial Development Corporation Revenue Bond Programs. The repeal is adopted without changes to the proposal as published in the June 25, 2004, issue of the *Texas Register* (29 TexReg 5991).

There was an error in the proposed preamble for the repeal of Chapter 185. The last sentence of the preamble states an incorrect citation for the affected law. The last sentence should have stated that Vernon's Texas Civil Statutes, Article 5190.6, §4, is affected by the repeal.

The repeal of the rules is adopted because the program is not currently active. Repealing the rules will allow for the development of a new program and the adoption of new rules in the future.

No comments were received regarding the proposed repeal.

The repeal is adopted under Texas Government Code, §481.005(d), which authorizes the director of the Division to adopt rules for programs administered by the Division, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

Vernon's Texas Civil Statutes, Article 5190.6, §4, is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 20, 2004.

TRD-200405801

Jeff Moseley

Chief Executive Officer

Office of the Governor, Economic Development and Tourism Division

Effective date: October 10, 2004

Proposal publication date: June 25, 2004

For further information, please call: (512) 936-0181



## CHAPTER 190. PROCEDURES OF THE BOARD

### 10 TAC §§190.1 - 190.7

The Office of the Governor, Economic Development and Tourism Division, adopts the repeal of Chapter 190, §§190.1 - 190.7, setting forth rules of Procedures of the Board. The repeal is adopted without changes to the proposal as published in the June 25, 2004, issue of the *Texas Register* (29 TexReg 5992).

The repeal of the rules is adopted because the governing board of the Texas Department of Economic Development was abolished by Senate Bill 275 of the 78th Texas Legislature, effective September 1, 2003. The functions of the agency have been transferred to the Governor's Office. New board members are not authorized by statute and will not be appointed.

No comments were received regarding the proposed repeal.

The repeal is adopted under Texas Government Code, §481.005(d), which authorizes the director of the Division to adopt rules for programs administered by the Division, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

Texas Government Code, Chapter 481, is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 20, 2004.

TRD-200405802

Jeff Moseley

Chief Executive Officer

Office of the Governor, Economic Development and Tourism Division

Effective date: October 10, 2004

Proposal publication date: June 25, 2004

For further information, please call: (512) 936-0181



## CHAPTER 195. MEMORANDA OF UNDERSTANDING

### 10 TAC §§195.1 - 195.12

The Office of the Governor, Economic Development and Tourism Division, adopts the repeal of Chapter 195, §§195.1 - 195.12, relating to Memoranda of Understanding. The repeal is adopted without changes to the proposal as published in the June 25, 2004, issue of the *Texas Register* (29 TexReg 5992).

The repeal of the rules is adopted because Senate Bill 275 of the 78th Texas Legislature, effective September 1, 2003, repealed Texas Government Code, §481.028, which directed the Texas Department of Economic Development to enter into memoranda of understanding with other state agencies and to adopt the memoranda of understanding as a rule.

No comments were received regarding the proposed repeal.

The repeal is adopted under Texas Government Code, §481.005(d), which authorizes the director of the Division to adopt rules for programs administered by the Division, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

Texas Government Code, Chapter 481, is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 20, 2004.

TRD-200405803

Jeff Moseley

Chief Executive Officer

Office of the Governor, Economic Development and Tourism Division

Effective date: October 10, 2004

Proposal publication date: June 25, 2004

For further information, please call: (512) 936-0181



## CHAPTER 196. ADVISORY COMMITTEES

### 10 TAC §§196.1 - 196.8

The Office of the Governor, Economic Development and Tourism Division, adopts the repeal of Chapter 196, §§196.1 - 196.8, setting forth rules for Advisory Committees. The repeal is adopted without changes to the proposal as published in the June 25, 2004, issue of the *Texas Register* (29 TexReg 5993).

The repeal of the rules is adopted because Senate Bill 275 of the 78th Texas Legislature, effective September 1, 2003, repealed Texas Government Code, §481.007, which authorized the Texas

Department of Economic Development to appoint advisory committees.

No comments were received regarding the proposed repeal.

The repeal is adopted under Texas Government Code, §481.005(d), which authorizes the director of the Division to adopt rules for programs administered by the Division, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

Texas Government Code, Chapter 481, is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 20, 2004.

TRD-200405804

Jeff Moseley

Chief Executive Officer

Office of the Governor, Economic Development and Tourism Division

Effective date: October 10, 2004

Proposal publication date: June 25, 2004

For further information, please call: (512) 936-0181



## CHAPTER 200. ADMINISTRATION

### 10 TAC §200.1, §200.11

The Office of the Governor, Economic Development and Tourism Division, adopts the repeal of Chapter 200, §200.1 and §200.11, setting forth rules for Administration. The repeal is adopted without changes to the proposal as published in the June 25, 2004, issue of the *Texas Register* (29 TexReg 5993).

The repeal of the rules is adopted because Senate Bill 275 of the 78th Texas Legislature, effective September 1, 2003, abolished the Texas Department of Economic Development and transferred its functions to the Office of the Governor. Chapter 200, relating to administration, adopted rules for procurement and contract dispute resolution that were required for state agencies. Since the Division is no longer a separate state agency, the rules are no longer needed.

No comments were received regarding the proposed repeal.

The repeal is adopted under the Texas Government Code, §481.005(d), which authorizes the director of the Division to adopt rules for programs administered by the Division, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

Texas Government Code, Chapter 481, is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 20, 2004.

TRD-200405805

Jeff Moseley

Chief Executive Officer

Office of the Governor, Economic Development and Tourism Division

Effective date: October 10, 2004

Proposal publication date: June 25, 2004

For further information, please call: (512) 936-0181



## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 1. LIBRARY DEVELOPMENT

#### SUBCHAPTER B. STANDARDS FOR ACCREDITATION OF A MAJOR RESOURCE SYSTEM OF LIBRARIES IN THE TEXAS LIBRARY SYSTEM

##### 13 TAC §1.48

The Texas State Library and Archives Commission adopts new rule, 13 TAC §1.48, without changes to the text as published in the August 20, 2004, issue of the *Texas Register* (29 TexReg 8056). This section addresses criteria for Major Resource Centers. Two comments were received during the comment period.

Both comments asked for clarification of 13 TAC §1.48(a)(1). A Major Resource Center director and a system advisory council chair commented that clarification of the requirement that a Major Resource Center must "have and annually maintain its accreditation as a member of the library system" was needed. They said a library that files an annual report and is found lacking on membership criteria may go on probation for three years. Further, they said the rule needs to address a timeframe for transition planning and implementation should an existing Center lose its accreditation, to prevent harm to the library system and the Center.

Response: A library that files an annual report and is found lacking on some membership criteria may, by rule, be put on probation for three years. However, other membership criteria do not, by rule, allow for probation. The agency understands the concern about what would happen to a system if the Major Resource Center lost system membership. However, we believe that a Major Resource Center must meet the same criteria as its member libraries, and that the rule as written allows working with individual circumstances should they arise, to meet the needs of the affected system and Major Resource Center.

This new section is adopted under the authority of Government Code §441.132, that provides the Commission authority to establish criteria for the designation of Major Resource Centers.

The proposed new sections affect the Government Code, §441.132.

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 September 27, 2004.

TRD-200405908  
Edward Seidenberg  
Assistant State Librarian  
Texas State Library and Archives Commission  
Effective date: October 17, 2004  
Proposal publication date: August 20, 2004  
For further information, please call: (512) 463-5459



### 13 TAC §1.63

The Texas State Library and Archives Commission adopts amended rule, 13 TAC §1.63, with changes to the text as published in the August 20, 2004, issue of the *Texas Register* (29 TexReg 8057). This section addresses criteria for demonstrating fiscal and administrative responsibility, detailing the requirements for a nonprofit regional library system that wishes to contract for the administration of the system by another organization entity. Two comments were received during the comment period.

The first comment asked for clarification of 13 TAC §1.63(b)(1), asking if the contracts between the nonprofit and business were limited to the specific contract for administration of the program, or all contracts between the two. Response: it was the intent of the agency to have all contracts between the nonprofit and the third party private business submitted.

The second comment noted there should be an "and" at the end of 13 TAC §1.63(b)(5). Response: The agency is making the following to clarify intent: in 13 TAC §1.63(b)(5), "and" was added.

This amended section is adopted under the authority of Government Code §441.131, that provides the Commission authority for major resource center systems to form regional library systems, for a system to form a nonprofit corporation, and for a system to contract with a private business to administer the system, and 441.006(a)(2), that provides the Commission authority to adopt rules.

The proposed amended section affects the Government Code, §441.131.

*§1.63. Proposal Requirements: Fiscal and Administrative Responsibility.*

(a) A nonprofit corporation organized under the Library Systems Act, §441.131, seeking to contract with the Texas State Library and Archives Commission as a regional library system must demonstrate fiscal and administrative responsibility as determined annually by the state library from the following information submitted by the nonprofit corporation:

- (1) articles of incorporation with the Office of the Secretary of State;
- (2) bylaws adopted by the board of directors and approved by the membership;
- (3) policies and procedures of the corporation on financial management, personnel, and procurement as adopted by the board of directors;
- (4) long-range plan (biennial budget) (see §1.43 of this title (relating to Long-Range Plan of System Services));
- (5) annual program and budget (see §1.44 of this title (relating to Annual Program and Budget for System Services));

(6) documentation of tax status with appropriate authorities; and

(7) detailed business plan, including cash flow analysis, cash flow management plan, verification of cash reserves and lines of credit, risk analysis, risk management plan, verification of specified insurance coverage, and a plan providing for the annual accumulation of cash reserves as described in §1.64 of this title (relating to Cash Reserves: Regional Library System) such that the reserve shall be fully funded by the date of submission of the sixth annual program of service submitted under the terms of this rule.

(b) A nonprofit corporation organized under subsection (a) of this section, seeking to contract with a third party private business to administer the system (when the contract exceeds \$100,000, or 20 percent of the system operation grant, whichever is less) must demonstrate fiscal and administrative responsibility as determined annually by the state library from the following information submitted by the nonprofit corporation and private business, in addition to the information submitted under subsection (a) of this section:

- (1) contracts between the business and the nonprofit corporation;
- (2) performance deposit in the form of an assignment of a savings account, a bank letter of credit, a continuous bond, a U.S. treasury bond readily convertible to cash, or any cash equivalent item, the amount to be not less than 10% of the proposed contract;
- (3) certificate of good standing from the Comptroller of Public Accounts;
- (4) tax returns of the business for the last three years;
- (5) audited financial statements of the business for the last three years, and;
- (6) detailed business plan, including cash flow analysis, cash flow management plan, verification of lines of credit, risk analysis, risk management plan, and verification of specified insurance coverage.

(c) A business (sole proprietorship, partnership, or corporation) seeking to contract with the Texas State Library and Archives Commission to administer services to a regional library system must demonstrate fiscal and administrative responsibility annually as determined by the state library from the following information submitted by the business:

- (1) contracts between the business and two-thirds of the governing bodies of the member libraries;
- (2) performance deposit in the form of an assignment of a savings account, a bank letter of credit, a continuous bond, a U.S. treasury bond readily convertible to cash, or any cash equivalent item, the amount to be not less than 10% of the proposed contract;
- (3) certificate of good standing from the Comptroller of Public Accounts;
- (4) tax returns of the business for the last three years;
- (5) audited financial statements of the business for the last three years;
- (6) long-range plan (biennial budget) (see §1.43 of this title (relating to Long-Range Plan of System Services));
- (7) annual program and budget (see §1.44 of this title (relating to Annual Program and Budget for System Services)); and
- (8) detailed business plan, including cash flow analysis, cash flow management plan, verification of lines of cash reserves and

credit, risk analysis, risk management plan, and verification of specified insurance coverage.

(d) Grants or contracts to regional library systems or other nonprofit corporations shall be administered by the State Library and Archives Commission according to the Uniform Grant and Contract Management Act (Government Code, Chapter 783) and the rules for administering this act (1 TAC §5.141 et seq.), unless federal statute or policy supersedes them.

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 September 27, 2004.

TRD-200405915  
Edward Seidenberg  
Assistant State Librarian  
Texas State Library and Archives Commission  
Effective date: October 17, 2004  
Proposal publication date: August 20, 2004  
For further information, please call: (512) 463-5459

### CHAPTER 3. STATE PUBLICATIONS DEPOSITORY PROGRAM

#### 13 TAC §3.1, §3.17

The Texas State Library and Archives Commission adopts amendments to 13 TAC §3.1, and new 13 TAC §3.17 regarding the State Publications Depository Program, without changes, as published in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6863). This revision and addition bring the State Publications Depository Program rules in alignment with Senate Bill 1701, which was enacted by the 78th Legislature.

No comments were received during the comment period.

The rules are adopted under Government Code §441.102, which authorizes the commission to establish a system to allow electronic access to state publications in an electronic format and under Government Code §441.010, which establishes an electronically searchable central grant database, establishes two advisory committees for this database, and authorizes the commission to appoint members to the public advisory committee.

The rules affect Government Code, §441.102, §441.010 and §§441.101 - 441.106.

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 September 27, 2004.

TRD-200405907  
Edward Seidenberg  
Assistant State Librarian  
Texas State Library and Archives Commission  
Effective date: October 17, 2004  
Proposal publication date: July 16, 2004  
For further information, please call: (512) 463-5459

## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 3. OIL AND GAS DIVISION

##### 16 TAC §3.80

The Railroad Commission of Texas (Commission) adopts amendments to §3.80, relating to Commission Forms, Applications, and Filing Requirements, without changes to the version published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7612) to correct Table 1 (Railroad Commission Oil and Gas Division Forms) and to revise three Oil and Gas Division forms.

The Commission revises Form W-1X, Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit, to delete references to fees. The Commission recently adopted amendments to §3.78 and several other rules in this title (published in the August 27, 2004, issue of the *Texas Register* (29 TexReg 8271)) to implement universal bonding under Texas Natural Resources Code, §§91.103, 91.104, 91.1041, 91.1042, 91.107, and 91.109, which become effective September 1, 2004, pursuant to Senate Bill 310, 77th Legislature (2001). Effective September 1, 2004, all operators who are not exempt from financial security requirements must have an individual or blanket performance bond, letter of credit, or cash deposit as financial security; the filing of an alternate form of financial security to obtain or renew an operator's Form P-5 Organization Report will no longer be permitted. On and after September 1, 2004, operators will be required to comply with the new universal bonding requirements as of the date of initial filing or renewal of their Form P-5 Organization Report. In addition, effective September 1, 2004, Senate Bill 310 eliminates the W-1X extension fee currently required to be filed by an operator who files an alternate form of financial security to obtain or renew a Form P-5 Organization Report.

The Commission also revises Form P-13, Application of Landowner to Condition an Abandoned Well for Fresh Water Production, to update the form to reflect changes in the statutes and in §3.14 of this title (relating to Plugging). Statutory amendments to Texas Natural Resources Code, §89.011, established that the duty of an operator to properly plug a well that is being plugged back to produce fresh water for the use of the surface owner ends only when the well has been properly plugged in accordance with Commission requirements and the surface owner has obtained a permit for the well from the groundwater conservation district, if applicable. The Commission amended §3.14(a)(4) to state that the Commission will consider an application for a surface owner to condition an abandoned well for fresh water production only if the surface owner submits a signed statement attesting that one of the following four facts exists: (1) there is no groundwater conservation district for the area in which the well is located; (2) there is a groundwater conservation district for the area where the well is located, but the groundwater conservation district does not require that the well be permitted or registered; (3) the surface owner has registered the well with the groundwater conservation district for the area where the well is located; or (4) the surface owner has obtained a permit from the groundwater conservation district for the area where the well is located. In addition, the Commission

added language regarding the requirement that the duty of the operator to properly plug the well ends only when the well has been properly plugged in accordance with Commission requirements up to the base of usable quality water stratum; the Commission has approved the application to condition the well for usable quality water production operations; and the surface owner has registered the well with, or has obtained a permit for the well from, the groundwater conservation district, if applicable.

The Commission has been using a supplemental sheet to acquire this information. The Commission now revises Form P-13 to incorporate these requirements. The Commission further makes other, relatively minor, changes to Form P-13, as it was published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7612), for ease of use based on staff's experience with the form over the years. In the "Distribution list," the Commission replaces the Texas Water Development Board (TWDB) with the Texas Department of Licensing and Regulation (TDLR), and adds to the list the Groundwater Conservation District, if applicable, in the list of entities to which the Commission will mail a copy of the approved Form P-13. The TDLR has advised the Commission that it will forward a copy to the TWDB.

The Commission also revises Form W-1, Application for Permit to Drill, Recomplete or Re-Enter, to make a correction to Item 31 on the front of the form and the instructions for Item 31 on the back of the form for the purpose of clarification. The Commission corrects Item 31, which currently requests the "Distance to Nearest Well in this Reservoir," to request the "Distance to Nearest Well in this Lease & Reservoir." The Commission clarifies in the instructions to Item 31 that this information is required to verify compliance with spacing and density rules.

The Commission also makes changes in Table 1 to reflect the new effective dates of the revised forms. The Commission adds back to Table 1 Forms P-1 and P-2, which were inadvertently deleted from the table. These forms are effective until the new, combined production reporting form, Form PR, becomes effective on February 11, 2005.

The Commission received no comments on the proposed amendments to §3.80 or the proposed changes to the forms.

The Commission adopts the amendments to §3.80 pursuant to Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells and persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction; §85.042, which authorizes the Commission to promulgate and enforce rules and orders necessary to carry into effect the provisions of this code and to prevent its violation; §85.201 and §85.202, which authorize the Commission to make and enforce rules and orders for the conservation of oil and gas and prevention of waste of oil and gas; §86.041 and §86.042, which give the Commission broad discretion in administering the provisions of this chapter and authorize the Commission to adopt any rule or order in the manner provided by law that it finds necessary to effectuate the provisions and purposes of this chapter; and §§91.101, 91.103, 91.104, 91.1041, 91.1042, 91.107, and 91.109, which authorize the Commission to prevent the waste of oil and gas and the pollution of surface water or subsurface water in the state, by adopting and enforcing rules and orders and issuing permits.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, 91.101, 91.103, 91.104, 91.1041, 91.1042, 91.107, and 91.109.

Cross-reference to statute: Texas Natural Resources Code, §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, 91.101, 91.103, 91.104, 91.1041, 91.1042, 91.107, and 91.109.

Issued in Austin, Texas, on September 21, 2004.

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 September 21, 2004.

TRD-200405818

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Effective date: October 11, 2004

Proposal publication date: August 6, 2004

For further information, please call: (512) 475-1295

## TITLE 22. EXAMINING BOARDS

### PART 10. TEXAS FUNERAL SERVICE COMMISSION

#### CHAPTER 205. REGISTRATION AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

The Texas Funeral Service Commission adopts the repeal of Title 22, Part 10, Chapter 205, §§205.1 - 205.3, concerning Registration and Enforcement--Specific Substantive Rules and adopts new Chapter 205, §§205.1, 205.3, 205.5, 205.7, 205.9, 205.11, 205.13, and 205.15, concerning Cemeteries and Crematories. New §205.3, concerning Crematory License Requirement and Procedure; §205.11, concerning Prerequisites for Cremation; §205.13, concerning Written Waiver of Identification Required; and §205.15, concerning Commingling Limitations are adopted with changes to the proposed text as published in the June 25, 2004, issue of the *Texas Register* (29 TexReg 6026). The repeal and new §205.1, concerning Cemetery License Requirements and Procedure; §205.5, concerning Acceptance of Remains; §205.7, concerning Waiting Period for Cremation; and §205.9, concerning Crematory Annual Report, Extension for Good Cause and Late Fees are adopted without changes to the proposal and will not be republished.

The repeal of Chapter 205 and the adoption of new Chapter 205 will include in one Chapter the licensing and fee requirements for cemeteries and crematories, as well as the crematory rules the commission is authorized to adopt under House Bill 1538, 78th Legislature, Regular Session.

Section 205.1 describes the cemeteries that are required to be licensed by the commission and the procedure for obtaining and renewing a license.

Section 205.3 describes the procedure for obtaining and renewing a crematory license.



Section 205.5 sets forth the statutory prohibition that a crematory not licensed as a funeral establishment may not accept human remains for cremation unless authorized to do so by a justice of the peace or medical examiner in the county in which death occurred.

Section 205.7 provides that cremation may not occur within 48 hours following the time of death, unless the waiting period is waived by a justice of the peace or medical examiner in the county in which death occurred.

Section 205.9 establishes the calendar year as the period to be covered by a crematory's annual report, requires the report to be postmarked by January 30 next following the calendar year for which the report is made, defines "good cause," establishes a procedure for obtaining an extension of no more than 60 days for filing the annual report based on good cause, and restates the statutory late fee of \$100 per day for failure to timely file the annual report.

Section 205.11 describes the documentation required as a prerequisite to conducting the cremation of deceased human remains.

Section 205.13 requires a waiver of identification to be written.

Section 205.15 places conditions on the commingling of deceased human remains with non-human materials or remains, unless specifically disclosed on the cremation authorization form.

The Commission received no comments regarding the repeal of Chapter 205, §§205.1 - 205.3.

The Texas Funeral Director's Association (commenter) furnished comments on all the proposed new sections, except §205.7 and §205.9. The comment on §205.13 was against the rule. All the other comments supported the proposal, with certain modifications.

Commenter stated that §205.1 should include the statutory requirement of Occupations Code, §651.354(a) that the commission mail written notice to a cemetery of the impending expiration of the cemetery's license 30 days before expiration. The commission disagrees. The commission is required to follow the dictates of §651.354(a). No need exists to include a statutory requirement imposed on the commission in this rule describing the process for obtaining and renewing a cemetery license. The commission has been giving the requisite 30 days' notice since it was authorized to register cemeteries and will continue doing so in the future.

Commenter pointed out a citation error in §205.3 as proposed. The reference to §205.7 should be §205.9. The commission agrees. The adopted section contains the correct cite.

Commenter stated that §205.3 "would require an applicant to comply with §651.658(a), Occupations Code, in order to receive a renewed license for a crematory. Section 651.658(a)(1), Occupations Code, requires the filing of an annual report listing the number of cremations performed at the crematory during the previous year. Section 651.658(e), Occupations Code, and proposed §205.3(c) - (e) permits the commission to grant an extension for filing the required annual report. However, the language as proposed would not permit the issuance of a license until such time as the report with an authorized extension were filed as the extension is not addressed in subsection (a). TFDA believes it was the intent of the legislature to permit crematory establishments to receive a renewed license if the establishment has paid

the renewal fee, provided the information required by §651.657, Occupations Code, and either filed the required report or has been granted an extension by the commission for filing the annual report."

Commenter recommended that the following language should be added to proposed §205.3(f) "... applicant has met the requirements of Texas Occupations Code §651.658(a) or the applicant has met the requirements of §651.658(a) with the exception of filing the annual report and the applicant has been granted an extension for filing the report by the commission."

The commission disagrees. Occupations Code, §651.658(a)(1) requires a crematory establishment to file an annual report before its license may be renewed. The commission is authorized by §651.658 to grant extensions for filing the annual reports of up to 60 days based on good cause. The commission is not authorized by §651.658, however, to issue a renewal license to a crematory establishment during the extension period. The annual report is for the calendar year. The crematory license is for one year, but more than likely that year will not be the calendar year.

Commenter suggested that §205.5 be clarified to reflect the holding of Attorney General Opinion GA-0218 (2004) that an authorizing agent may contract directly for crematory services if the crematory is licensed as a funeral establishment or if the cremation is authorized by a medical examiner or justice of the peace in the county where death occurred.

The commission does not disagree with the comment. Section 205.5 as proposed, however, is directed to crematory establishments not licensed as funeral establishments. The commission will adopt §205.5 as proposed and intends to propose the suggested language as a separate rule.

Commenter observed that the cite to Health and Safety Code, §715.051 in §205.11 is incorrect. The commission agrees. The adopted section contains the correct cite.

Commenter suggested that the term "other death record" should be substituted for the term "burial transit permit" in §205.11 to mirror the wording of Health and Safety Code, §716.051. The commission agrees.

Commenter contends that the requirement in proposed §205.13 that a waiver of identification be in writing exceeds the commission's statutory authority. The commission disagrees. Health and Safety Code, §716.002 authorizes the commission to adopt rules consistent with Chapter 716 and the Occupations Code, Chapter 651. The commission believes that this section is consistent with Chapter 716. The requirement that the waiver be in writing will reduce the number of disputes that potentially could arise between authorizing agents and crematories if waivers of identification are allowed to be made verbally.

Commenter recommended alternative language for §205.15 that tracks the requirements of Health and Safety Code, §716.153(a) and §716.154(b). The commission agrees. Counsel for the commission has determined that the section as adopted affects no new individuals or entities and that compliance with the adopted version will be no more onerous than under the proposed version. Accordingly, republication as a proposed rule is not required.

**22 TAC §§205.1 - 205.3**

The repeal is adopted under the authority of the Texas Occupations Code, §651.152 which authorizes the commission to issue such rules and regulations as may be necessary to administer Chapter 651. The repeal is also adopted under Health and Safety Code, §716.002. The commission interprets that section as authorizing it to adopt rules consistent with Health and Safety Code, Chapter 716 and the Occupations Code, Chapter 651.

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 September 21, 2004.

TRD-200405820

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Effective date: October 11, 2004

Proposal publication date: June 25, 2004

For further information, please call: (512) 936-2466



## CHAPTER 205. CEMETERIES AND CREMATORIES

### 22 TAC §§205.1, 205.3, 205.5, 205.7, 205.9, 205.11, 205.13, 205.15

The new sections are adopted under the authority of the Texas Occupations Code, §651.152 which authorizes the commission to issue such rules and regulations as may be necessary to administer Chapter 651. The new sections are also adopted under Health and Safety Code, §716.002. The commission interprets that section as authorizing it to adopt rules consistent with Health and Safety Code, Chapter 716 and the Occupations Code, Chapter 651.

#### §205.3. *Crematory License Requirement and Procedure.*

(a) The crematory establishment license application shall be on a form furnished by the commission and shall contain all information required by Texas Occupations Code, §651.657, including:

(1) a statement that all operators of the cremation chamber are certified by a reputable organization approved by the Commission; and

(2) the names of all persons certified to operate the cremation chamber.

(b) The completed application, including all required documentation, shall be paid before the commission inspects the crematory establishment.

(c) The establishment shall submit the licensing fee after it has passed inspection. The amount of the licensing and renewal fees are posted on the commission's website at [www.tfsc.state.tx.us](http://www.tfsc.state.tx.us).

(d) A license is for one year.

(e) The license may be renewed by filing with the commission a renewal application accompanied by the renewal fee and the Crematory Annual Report required by Texas Occupations Code,

§651.658(a)(1) and §205.9 of this Chapter (relating to Crematory Annual Report, Extensions for Good Cause, and Late Fees).

(f) The renewal application must contain the information required by Texas Occupations Code, §651.657 and subsection (a) of this section or a statement that the information previously furnished has not changed.

(g) The commission may not renew an application until the applicant has met the requirements of Texas Occupations Code, §651.658(a).

(h) A crematory that fails to renew its license by its renewal date shall pay, in addition to the renewal fee, a late payment penalty equal in amount to the renewal fee.

(i) The license that is not renewed within 30 days of its expiration date may not be renewed. In this circumstance a new license is required.

#### §205.11. *Prerequisites for Cremation.*

(a) Health and Safety Code §716.051 provides that a crematory may cremate deceased human remains upon receipt of a cremation authorization form signed an authorizing agent and either a death certificate or other death record issued by a local registrar reflecting that the deceased human remains may be cremated.

(b) As a practical matter, however, three documents are required to accomplish the cremation of deceased human remains:

(1) a cremation authorization form;

(2) a death certificate; and

(3) a burial transit permit.

(c) The Department of State Health Services (DSHS) remains authorized to regulate the transportation of dead bodies under Health and Safety Code, §694.001. DSHS 25 TAC §181.2 (relating to Assuming Custody of Body) requires a funeral director or person acting as such to obtain a burial-transit permit from the local registrar if a body is to be cremated.

#### §205.13. *Written Waiver of Identification Required.*

A waiver of a right of identification under Health and Safety Code, §716.104(b) is valid only if given in writing.

#### §205.15. *Commingling Limitations.*

(a) A crematory establishment may not simultaneously cremate the deceased human remains of more than one person in the same cremation chamber unless authorized by the authorizing agent of each deceased person in a cremation authorization form or other written document.

(b) A crematory establishment may not simultaneously cremate deceased human remains with items of value, pacemakers or other potentially hazardous implants that are specifically disclosed by the authorizing agent on the cremation authorization form and are not authorized by the authorizing agent to be cremated with the deceased human remains.

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 September 21, 2004.

TRD-200405819  
O.C. "Chet" Robbins  
Executive Director  
Texas Funeral Service Commission  
Effective date: October 11, 2004  
Proposal publication date: June 25, 2004  
For further information, please call: (512) 936-2466



## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### CHAPTER 509. RULEMAKING PROCEDURES

#### 22 TAC §509.6

The Texas State Board of Public Accountancy adopts an amendment to §509.6, concerning Rulemaking Procedures without changes to the proposed text as published in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7248). The text of the rule will not be republished.

The amendment will change from 20 to 30 days the time that a request for a public hearing on proposed rules must be received in the board's offices.

The amendment will function by allowing the board more time in which to arrange for public hearings on rules.

Five comments were received regarding adoption of this rule. TACPA opposes §509.6 because it shortens the public's time to respond to proposed rules. In response to this particular comment, TACPA read the proposed rule incorrectly. The proposed reduction is in the time period within which to request that the board conduct a public hearing on proposed rules. The time period within which to submit written comments to proposed rules is not being changed. Some commenters misread proposed §509.6 similarly to TACPA. One commenter on proposed §509.6 said that it adopted TACPA's statement and TACPA's statement on §509.6 was erroneous.

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

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

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

Filed with the Office of the Secretary of State on September 22, 2004.

TRD-200405856  
Rande Herrell  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: October 12, 2004  
Proposal publication date: July 30, 2004  
For further information, please call: (512) 305-7848



### CHAPTER 511. CERTIFICATION AS A CPA

## SUBCHAPTER D. CPA EXAMINATION

#### 22 TAC §511.89, §511.90

The Texas State Board of Public Accountancy adopts the repeal of §511.89, concerning Examination Sites and Board Policy on Documentation and §511.90, concerning Proctoring Candidates for another Licensing Jurisdiction without changes to the proposal as published in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7249).

The repeals will remove rules rendered obsolete by the computerized examination.

The repeal will function by removing obsolete rules from the Board's rules.

No comments were received regarding adoption of these repeals.

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

No other article, statute or code is affected by these adoptions.

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 September 22, 2004.

TRD-200405857  
Rande Herrell  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: October 12, 2004  
Proposal publication date: July 30, 2004  
For further information, please call: (512) 305-7848



### CHAPTER 521. FEE SCHEDULE

#### 22 TAC §521.10

The Texas State Board of Public Accountancy adopts the repeal of §521.10, concerning Out-of-State Proctoring Fee without changes to the proposal as published in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7249).

The repeal will remove a rule rendered obsolete by the computerized examination.

The repeal will function by removing an obsolete rule from the Board's rules.

No comments were received regarding adoption of the repeal.

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

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

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

Filed with the Office of the Secretary of State on September 22, 2004.

TRD-200405858

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: October 12, 2004

Proposal publication date: July 30, 2004

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



## CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

### SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

#### 22 TAC §523.112

The Texas State Board of Public Accountancy adopts an amendment to §523.112, concerning Mandatory CPE Attendance without changes to the proposed text as published in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7250). The text of the rule will not be republished.

The amendment will move the rule's commencement date forward from December 31, 2005 to January 1, 2005 for the requirement that in order for CPE to be accepted by the board it must be provided by board contracted CPE sponsors.

The amendment will function by implementing the rule a year earlier.

Three comments were received regarding adoption of the rule. TACPA and another commenter opposed proposed §523.112's commencement date of January 2005 because it allows only four months planning for CPE courses to be offered in 2005. Although one comment contained an "re" of proposed §523.112, the language of the comment did not address §523.112. In response to the comments, the Board considered the effect of the earlier start date. While the earlier starting date might be an inconvenience for these persons, it will not be a problem for the majority of CPE providers.

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

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

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

Filed with the Office of the Secretary of State on September 22, 2004.

TRD-200405859

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: October 12, 2004

Proposal publication date: July 30, 2004

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



## SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

#### 22 TAC §§523.145 - 523.147

The Texas State Board of Public Accountancy adopts the repeal of §523.145, concerning Obligations of the Sponsor; §523.146, concerning Registry of National Association of State Boards of Accountancy (NASBA) CPE Sponsors and §523.147, concerning Sponsor Review Oversight Program without changes to the proposal as published in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7251). Section 523.144 that was proposed in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7251) will not be repealed at this time and is being withdrawn.

The repeals will remove rules that are being re-written.

The repeals will function by replacing these rules with re-written rules.

No comments were received regarding adoption of these repeals.

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

No other article, statute or code is affected by these adoptions.

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 September 22, 2004.

TRD-200405860

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: October 12, 2004

Proposal publication date: July 30, 2004

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



#### 22 TAC §§523.145 - 523.147

The Texas State Board of Public Accountancy adopts new §523.145, concerning Obligations of the Sponsor with a non-substantive change to the proposed rule as published in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7251). The change to §523.145 adds a sentence to the end of subsection (b) to clarify that Sponsor reviews will not commence until after June 1, 2005. The Texas State Board of Public Accountancy adopts new §523.146, concerning Registry of NASBA CPE Sponsors and §523.147, concerning Sponsor

Review Program without changes to the proposed text as published in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7251). The text of these rules will not be republished. Section 523.144 that was proposed in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7251) will not be adopted at this time and is being withdrawn.

The new rules will create the new CPE Review Program.

The new rules will function by creating a new CPE Review Program.

One comment was received by the Board that specifically related to §523.146. The Texas Society of Certified Public Accountants sees a conflict between §523.146(b) stating that NASBA registered sponsors are not subject to review while §523.146(c)(2) indicates that they are subject to review. In response, subsection (c)(2) only requires sponsors to cooperate with the review program by, for example occasionally providing requested information; (c)(2) does not state that they are subject to review. The Board received several written comments regarding proposed §523.144. After consideration of all of these comments and after additional discussion and consideration of the proposed rule, the Board declined to consider the proposed rule for adoption and withdrew proposed §523.144. The Board re-drafted and issued a new proposed §523.144 for publication to elicit public comments for consideration at the November 2004 meeting.

The new rules are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the Board to promulgate rules regarding peer review.

No other article, statute or code is affected by these adoptions.

§523.145. *Obligations of the Sponsor.*

(a) In consideration for registering as a CPE sponsor each organization shall certify in writing, to the following:

(1) "We understand that after acceptance of the application or reapplication for a registration by the board we may advise prospective attendees of the program sponsor registration, our sponsor number, and the number of credit hours recommended. We further agree that if we notify licensees of this registration we shall do so by use of the following language, 'We are registered with the Texas State Board of Public Accountancy as a CPE sponsor. This registration does not constitute an endorsement by the board as to the quality of our CPE program.'"

(2) "We understand that our advertising shall not be false or misleading."

(3) "We agree that persons designated by the board may inspect our facilities, examine our records, attend our courses or seminars at no charge, and review our program to determine compliance with the sponsor registration requirements, CPE standards and applicable board rules."

(4) "We understand and agree that if we fail to comply with the registration requirements or fail to meet acceptable standards in our programs, the sponsor registration may be terminated at any time by the board, the sponsor registration or renewal application may be denied, and notice of such termination or denial may be provided to licensees by the board."

(b) Every board registered CPE sponsor shall cooperate fully with the board's sponsor review program. At least every three years

a sponsor will undergo a sponsor review. This cooperation shall include, but not be limited to providing information, records and access to programs and instructors as requested. Failure to cooperate with the program shall be grounds for terminating the registration. Sponsor reviews will not commence until after June 1, 2005.

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 September 22, 2004.

TRD-200405861

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: October 12, 2004

Proposal publication date: July 30, 2004

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



## CHAPTER 526. BOARD OPINIONS

### 22 TAC §526.1, §526.3

The Texas State Board of Public Accountancy adopts an amendment to §526.1 concerning Issuance of Opinions and §526.3 concerning Advisory Opinions without changes to the proposed text as published in the July 30, 2004 issue of the *Texas Register* (29 TexReg 7254). The text of the rules will not be republished.

The amendment to §526.1 will delete two redundant and unnecessary words which will allow the Board to issue opinions before licensees are required to take action. The amendment to §526.3 will remove committee members from the list of persons that are authorized to issue advisory opinions.

The amendment to §526.1 will function by allowing licensees to obtain opinions to help them comply with the Rules and the Act. The amendment to §526.3 will function by restricting the issuance of advisory opinions to fewer persons.

These amendments are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Title 22, TAC, Part 22, Chapter 526 in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

No comments were received regarding adoption of these rules.

The amendments are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for reoption each rule adopted by that agency.

No other article, statute or code is affected by these adoptions.

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 September 22, 2004.

TRD-200405862

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: October 12, 2004

Proposal publication date: July 30, 2004

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



## CHAPTER 527. PEER REVIEW

### 22 TAC §§527.1 - 527.11

The Texas State Board of Public Accountancy adopts an amendment to §527.1 concerning Establishment of Peer Review Program; §527.2 concerning Definitions; §527.3 concerning Standards for Peer Reviews and Sponsoring Organizations; §527.4 concerning Enrollment and Participation; §527.5 concerning Effect of Successive Substandard Reviews; §527.6 concerning Reporting to the Board; §527.7 concerning Peer Review Oversight Board; §527.8 concerning Retention of Documents; §527.9 concerning Procedures for a Sponsoring Organization; §527.10 concerning Peer Review Report Committee; and §527.11 concerning Responsibilities of Peer Review Report Committee without changes to the proposed text as published in the July 30, 2004 issue of the *Texas Register* (29 TexReg 7255). The text of the rules will not be republished.

The amendment to §527.1 is primarily editorial to improve its readability, to clarify that other attestation standards are included and to add disciplinary sanctions and corrective action as options. The amendment to §527.2 adds the definition of firm inspection program and has some editorial changes. The amendment to §527.3 recognizes the creation of the PCAOB, the acronym AICPA and other changes caused by the Sarbanes-Oxley Act. The amendment to §527.4 will, aside from several editorial changes, clarify that succeeding firms retain their previous firms' peer review status and due date and adds an interpretive comment that some firms may have to undergo both a SOX firm inspection and peer review. The amendment to §527.5 changes the required 18 month required accelerated review date to a date as selected by the Peer Review Committee, expands the Board's discretion to also include corrective or any other action for less than unmodified review reports, and has a few editorial changes. The amendment to §527.6 adds copies of final reports by the PCAOB's firm inspection program and accompanying documentation to the list of items required to be submitted to the Board and has a couple of editorial changes. The amendment to §527.7 recognizes the CPCAF and the PCAOB, replaces review with analysis, assessment, evaluation, examine, or examination in several places, excludes current board and committee members from being eligible to serve on the PROB and has a few editorial changes. The amendment to §527.8 consists of three editorial changes. The amendment to §527.9 exempts the PCAOB from this rule. The amendment to §527.10 consists of three editorial changes. The amendment to §527.11 removes an unnecessary phrase and has one minor editorial change.

The amendments will function by recognizing the Sarbanes-Oxley Act, the PCAOB and the CPCAF in the peer review rules.

These amendments are the result of rule review conducted pursuant to §2001.039 of the Government Code. 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). The Board published a Notice of Intention to Review Title 22, TAC, Part 22, Chapter 527 in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

No comments were received regarding adoption of these rules.

The amendments are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for re-adoption each rule adopted by that agency and by the Sarbanes-Oxley Act.

No other article, statute or code is affected by these adoptions.

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 September 22, 2004.

TRD-200405863

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: October 12, 2004

Proposal publication date: July 30, 2004

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



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 53. FINANCE

##### SUBCHAPTER A. FEES

#### DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

##### 31 TAC §53.2

The Texas Parks and Wildlife Commission adopts an amendment to §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules, with changes to the proposed text as published in the July 23, 2004, issue of the *Texas Register* (29 TexReg 7031). The change replaces the term 'authorization number' with the term 'confirmation number' throughout the rule. The change is necessary because the department's automated licensing system has been revamped and the terminology has been changed, rendering the term 'authorization number' meaningless.

Under current regulations a person may hunt species other than deer and turkey without having a hunting license in their possession, provided the person has acquired a hunting license electronically and has a valid confirmation number in their possession. Deer and turkey are not included because deer and turkey are required to be tagged upon kill. Since the tags are part of the hunting license, a license had to be physically possessed in order to comply with the tagging requirement. However, recent rulemaking action by the Texas Parks and Wildlife Commission has removed the tagging requirements for deer taken by Managed Lands Deer (MLD) Permits, Landowner Assisted Management Permits (LAMPS), by special permit under the provisions of Chapter 65, Subchapter H of this title (concerning the Public Lands Proclamation) on department lands, on department-leased lands under the provisions of Parks and Wildlife Code, §11.0272, and by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program. Accordingly, the amendment allows persons who acquire a license electronically to hunt deer, provided they also possess the appropriate permit, in addition to the confirmation number.

The amendment will function by allowing a person to hunt deer (under certain circumstances) without being in physical possession of a hunting license, provided that the person has purchased a license electronically and possesses a department-issued confirmation number valid for that transaction.

The department received 100 comments opposing adoption of the proposed rule. Forty-three commenters offered a specific reason or reasons for opposition. Those comments and the department's response follow.

Five commenters opposed adoption of the proposed rule by stating that the rule would cause problems with tagging. The department disagrees with the comments and responds that the rule would make compliance with tagging requirements easier, since the landowner-supplied tag must be used, but no license tag would be required. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the rule would allow illegal hunters to take advantage of the system. The commenters did not elaborate. The department disagrees with the comments and responds that the rule is intended to provide convenience for hunters who need to acquire and use a license quickly. The department also notes that there is no reason to believe that the rule will encourage any person to break the law, or that the rule can somehow be exploited to allow an unlawful act. No changes were made as a result of the comments.

One commenter opposed adoption and stated that all deer should have to be tagged because tagging provides a barrier to poachers. The department agrees with the comment and responds that under the rule, hunters will still have to tag deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that poachers will copy anything done online. The department disagrees with the comment and responds that the rule requires a person to possess a confirmation number. Since the confirmation number is uniquely tied to a specific transaction with a specific person, it is relatively easy for the department to determine if someone is in effect hunting under the license of another or hunting under an invalid confirmation number. No changes were made as a result of the comment.

Eleven commenters opposed adoption and stated that a person should have to have a license on their person while hunting. Four of the commenters also stated that the license should be required in order to facilitate positive identification in the field. The department disagrees with the comments and responds that the purpose of license possession laws is to enable the department to determine that a given hunter has paid for the privilege of hunting, since the department relies in large part on license revenues to fund the conduct of its duties and obligations. Under the rule as adopted, no hunter is relieved of the requirement to purchase a hunting license, although the hunter is required to have a department-issued confirmation number on their person. As for the positive identification issue, Parks and Wildlife Code, §12.115, provides for an offense if a person fails or refuses to display the driver's license or personal identification certificate when requested to do so by any peace officer. No changes were made as a result of the comments.

Four commenters opposed adoption of the rule and stated that it would invite fraud. The department disagrees with the comments and responds that any person who hunts under the provisions of the rule must have a valid confirmation number and an appropriate permit. The department believes that the potential for fraud under the rule is not any higher than it would be without the rule. No changes were made as a result of the comments.

One commenter opposed adoption and stated that without a license tag, taxidermists and processing plants won't be able to verify that deer have been taken legally. The department disagrees with the comment and responds that deer taken under the rule must be tagged with an appropriate tag, and that any questions from processors or taxidermists will be easily answered with a phone call to the department or local warden or biologist. No changes were made as a result of the comment.

One commenter opposed adoption of the rule and stated that there would be abuse on corporate leases. The department disagrees with the comment and responds that any person who hunts deer after purchasing a license electronically must abide by all provisions of the rule (and all rules of the department, for that matter), irrespective of where the hunting activity takes place. No changes were made as a result of the comment.

One commenter opposed adoption of the rule and stated that it would result in electronic theft of license numbers. The commenter also stated that setting up the new system would cost at least several million dollars, which would allow TPWD to charge a new fee for regular hunting licenses that Texas hunters and others legally hunting in our state would be forced to pay. The commenter further stated that the convenience is not worth the cost and the increased vulnerability to illegal activity, and that it is a waste of hunting/fishing license sales income for TPWD to invest in a new scheme because some software vendor wants to sell a new license system. The department disagrees with the comment and responds that the rule will not cause the department to invest in or develop a new system for vending licenses; licenses have been sold by telephone for several years without difficulty and the expense of providing the convenience of this option is paid for directly by those who use it, in the form an additional fee. The department also notes that current security measures are believed to be sufficient to protect the department from electronic theft. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that since deer must be tagged immediately, the confirmation number makes compliance with the requirement impossible and opens the door

for poaching and non-tagging of deer. The department disagrees with the comments and responds that the rule does not relieve a hunter of all tagging requirements, just those tagging requirements involving license tags. Hunters still would have to tag all deer taken with an appropriate landowner-supplied permit. No changes were made as a result of the comments.

Six commenters opposed adoption of the rule and stated that the rule would allow people to exceed the bag limit because a tag isn't required. The agency disagrees with the comments and responds that the rule does not eliminate any tagging requirement. A deer taken under a license confirmation number must be tagged with an appropriate landowner-supplied permit. No changes were made as a result of the comments.

One commenter opposed adoption of the rule and stated that there should be a single, standard license for everyone. The department agrees with the comment and responds that the rule doesn't create a new type of license, but simply offers an additional way to purchase a hunting license. No changes were made as a result of the comment.

Three commenters opposed adoption of the rule and stated that it would make enforcement more difficult. The department disagrees with the comments and responds that the rule as adopted is enforceable in the opinion of the department's legal staff. No changes were made as a result of the comments.

One commenter opposed adoption of the rule and stated that it would allow a person to buy a license by use of a cellular phone after taking a deer. The department acknowledges that the commenter's scenario is possible, but notes that under current rules a person could just as easily kill a deer and then drive to another location to purchase a license. In any case, persons who choose to take wildlife resources without having purchased the appropriate license are in violation of the law and are subject to citation and prosecution. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the purpose of the license is to secure a permit. The department disagrees with the comment and responds that the purchase of a hunting license does not obligate the purchaser to obtain a permit of any kind; however, in order to hunt deer under a license purchased by phone, the hunter must possess an appropriate landowner-issued permit. No changes were made as a result of the comment.

Two commenters opposed adoption of the rule and stated that deer should be required to be tagged. The department agrees with the comments and responds that the rule as adopted does not relieve any person of tagging requirements. No changes were made as a result of the comments.

The department received 178 comments supporting adoption of the proposed rule.

The amendment is adopted under the authority of Parks and Wildlife Code, §12.702, which authorizes the commission by rule to set collection and issuance fees for a license, stamp, tag, permit, or other similar item issued under any chapter of the code.

*§53.2. License Issuance Procedures, Fees, Possession, and Exemption Rules.*

(a) Hunting license possession.

(1) No person may hunt turkey in this state without having a valid hunting license in immediate possession.

(2) A person may hunt species other than turkey in this state without having a valid hunting license in immediate possession if that

person has acquired a license electronically (including by telephone) and has a valid confirmation number in his possession. Confirmation numbers shall only be valid for 20 days from date of purchase.

(3) A person may hunt deer in this state without having a valid hunting license in immediate possession only if that person:

(A) has acquired a license electronically (including by telephone) and has a valid confirmation number in his possession; and

(B) is lawfully hunting:

(i) under the provisions of §65.26 of this title (relating to Managed Lands Deer (MLD) Permits);

(ii) under the provisions of §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(iii) by special permit under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation);

(iv) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0272; or

(v) by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(b) Fishing license possession.

(1) A person may fish in this state without having a valid fishing license in immediate possession if that person:

(A) is exempt from holding a fishing license; or

(B) has acquired a license electronically (including by telephone) and has a valid confirmation number in possession. Confirmation numbers shall only be valid for 20 days from date of purchase.

(2) No person may catch and retain a red drum over 28 inches in length in the coastal waters of this state without having a valid fishing license, saltwater sportfishing stamp, and red drum tag in immediate possession.

(c) Issuance of licenses and stamps electronically (including by telephone).

(1) A person may acquire recreational hunting and/or fishing licenses electronically (including by telephone) from the department or its designated representatives by agreeing to pay a convenience fee of up to \$5 per license in addition to the normal license fee.

(2) A person may acquire recreational hunting and/or fishing stamps electronically (including by telephone) from the department or its designated representatives by agreeing to pay a convenience fee of up to \$5 per stamp order in addition to the normal stamp fee(s). This fee shall not be charged if a license is acquired during the same transaction.

(d) The following categories of persons are exempt from fishing license requirements and fees:

(1) residents under 17 years of age;

(2) non-residents under 17 years of age;

(3) non-residents 65 years of age or older who are residents of Louisiana and who possess a Louisiana recreational fishing license;

(4) non-residents 64 years of age or older who are residents of Oklahoma;

(5) persons who hold valid Louisiana non-resident fishing licenses while fishing on all waters inland from a line across Sabine Pass between Texas Point and Louisiana Point that form a common



boundary between Texas and Louisiana if the State of Louisiana allows a reciprocal privilege to persons who hold valid Texas annual or temporary non-resident fishing licenses; and

(6) residents of Louisiana who meet the licensing requirements of their state while fishing on all waters inland from a line across Sabine Pass between Texas Point and Louisiana Point that form a common boundary between Texas and Louisiana if the State of Louisiana allows a reciprocal privilege to Texas residents who hold valid Texas fishing licenses.

(e) An administrative fee of \$3 shall be charged for replacement of lost or destroyed licenses, stamps, or permits. This fee shall not be charged for items which have a fee for duplicates otherwise prescribed by rule or statute.

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 September 23, 2004.

TRD-200405882

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Commission

Effective date: October 13, 2004

Proposal publication date: July 23, 2004

For further information, please call: (512) 389-4775



### 31 TAC §53.15

The Texas Parks and Wildlife Commission adopts an amendment to §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits, without changes to the proposed text as published in the July 23, 2004, issue of the *Texas Register* (29 TexReg 7033). The amendment imposes an application fee of \$12 for a cormorant control permit.

The amendment is necessary to recover the administrative cost of issuing cormorant control permits, evaluating annual reports, and maintaining records. The department anticipates demand for the permits to be on the order of 2,000 per year. The department also estimates that the cost of processing and issuing the permits, collecting and analyzing annual reports, and summarizing the data from the annual reports for submission to the Service will be approximately \$24,000 per year. Therefore, dividing the number of permits expected to be issued by the cost expected to be incurred yields the proposed fee per permit.

The rule will function by requiring persons to pay a fee of \$12 to be issued a cormorant control permit.

Six commenters opposed adoption of the proposed amendment and stated that the permit should be free. The department disagrees with the comment and responds that a fee must be charged in order to recover the administrative cost of maintaining the permit program and collecting utilization data for reporting purposes. No changes were made as a result of the comments.

One commenter opposed adoption of the proposed amendment and stated that there should not be yet another fee imposed on sportsmen, especially those who are helping the department to conserve fish populations for the future. The department disagrees with the comment and responds that the fee is voluntary,

as no person is required to purchase a cormorant control permit. The department also notes that double-crested cormorants do not threaten fisheries resources on a statewide or even an ecosystem scale and that the control permit is intended as a means to address problems in areas where the bird is causing localized problems. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed amendment and stated that the fee is just another fee intended only for raising revenue for the general fund and not for any specific wildlife or conservation efforts. The department disagrees with the comment and responds that fee revenue will be used only to recoup the cost to the department of administering the permit program and will not be used for any other purpose. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed amendment and stated that the migratory bird stamp should be all that's required for a person to take cormorants. The department disagrees with the comment and responds that revenue from sales of the state waterfowl stamp is dedicated by state law to the conservation of waterfowl, i.e., a game bird. Since the cormorant is not a game bird under federal law (which means it cannot be declared a game bird under state law), the cost of administering the control permit program could not legally be paid for out of waterfowl stamp funds. No changes were made as a result of the comment.

The department received 259 comments supporting adoption of the proposed rule.

Texas Wildlife Association commented in favor of adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §67.0041, which authorizes the issuance of permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species, and authorizes the commission to set a fee for a permit.

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 September 20, 2004.

TRD-200405794

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Effective date: October 10, 2004

Proposal publication date: July 23, 2004

For further information, please call: (512) 389-4775



## CHAPTER 65. WILDLIFE

### SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

#### 31 TAC §65.102

The Texas Parks and Wildlife Commission adopts an amendment to §65.102, concerning Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds (commonly known as 'Triple T' permits), with changes to the proposed text as published in the July 23, 2004, issue of the *Texas Register* (29 TexReg 7034). The change is a nonsubstantive alteration. In subsection (a) of the current rule, reference is made to the Texas Veterinary Medical Diagnostic Laboratory. The correct title of that entity is the Texas Veterinary Medical Diagnostic Laboratories.

The intent of the amendment is to clarify provisions governing testing protocols for chronic wasting disease for persons seeking Triple T permits to move white-tailed deer.

In 2003, the department issued 26 Triple T permits authorizing the relocation of deer. Although this number represents an infinitesimally small percentage of all landowners and deer in Texas, it nevertheless is significant from an epidemiological standpoint, since it represents animals that are being moved from place to place in a fashion that would not normally occur in nature, thus increasing the risk of disease transmission far beyond what exists naturally in wild populations of free-ranging deer. Therefore, the amendment is necessary to ensure the integrity of the department's strategy to monitor for chronic wasting disease (CWD) in wild populations of white-tailed deer and minimize the risk of moving the disease if it is present.

The amendment also standardizes regulatory terminology to be consistent with terminology used by the Texas Veterinary Medical Diagnostic Laboratories (TVMDL). When the rule was originally adopted, the department was unaware that the terminology used by the TVMDL described three possible test results: 'detected,' 'location,' and 'not detected.' Therefore, the amendment removes the phrase '100% negative' and adds a sentence to subsection (a) stating that permits will be issued only if the test result for each deer in a sample is 'not detected.' The amendment also makes it clear that the department will not authorize Triple T activities that involve a trap site where CWD has been detected. The provisions of the department's stocking policy, codified at 31 TAC Chapter 52, are sufficient authority to deny permit issuance on the basis of impacts to ecosystems; however, the department would prefer to be absolutely certain that the ability to deny a permit on this basis is understood. The amendment also clarifies that CWD test samples must be collected and tested within 12 months of the permit year for which a permit is sought. The intent is to prevent the 'stockpiling' of samples, which would negatively impact the functionality of the department's sampling plan by confounding the assumption that test results accurately characterize disease detection efforts through time. In the same vein, the amendment stipulates that no test result be used more than once, with the exception that approved movement could take place in the next year. For instance, if a permittee received authorization to move 100 deer but only moved 50, that person could apply for a Triple T permit the following year, re-submit the test results, and receive authorization to move the remaining 50 deer. However, any deer beyond the number remaining from the previous year would trigger the testing requirements. This portion of the amendment is necessary to acknowledge that from an epidemiological standpoint, a statistically valid sample at a given point in time is sufficient to satisfy the department's disease-detection and risk-assessment protocols for a year. Additionally, on smaller properties it is problematic for individuals to collect a sufficient number of samples within one trapping season and still accomplish the trapping activities.

The rule was adopted after consultation with the Texas Animal Health Commission and the White-tailed Deer Advisory Committee (an external advisory group of landowners and wildlife managers appointed by the presiding officer of the Texas Parks and Wildlife Commission). CWD is a transmissible spongiform encephalopathy that has been detected in free-ranging deer populations in other states and Canada. Since CWD has not yet been exhaustively studied, the peculiarities of its transmission, infection rate, incubation period, and potential for transmission to other species are not definitively known. What is known is that CWD can be and is passed from deer to deer and is invariably fatal. Although no deer have tested positive for CWD in Texas, the department cannot categorically discount the presence of the disease in the state. Therefore, the department must address any and all threat potentials for the introduction, transmission, or spread of CWD in order to discharge its statutory duty to manage and protect wildlife resources (in this case, deer) in this state. Free ranging white-tailed deer and mule deer have been found to be infected with CWD in Wisconsin, New Mexico, Illinois, South Dakota, Nebraska, Wyoming, Utah, and Colorado and within confined infected elk and white-tailed deer facilities in Oklahoma, Colorado, Wyoming, Montana, South Dakota, Nebraska, Minnesota, and Wisconsin. Each area where the disease has been detected is a significant distance from other known infected herds, which indicates that agents other than natural dispersion are involved (e.g., trapping and transplanting operations). The department has for many years authorized the trapping and transplanting of deer under the Triple T permit program; therefore, any area of the state may be at risk, however slight, which cannot be categorically be ruled out at the present time. Any deer trapped and transplanted within Texas conceivably could have been in contact with a CWD-positive deer prior to being trapped and transplanted and could thus be a vector for introducing the disease to additional areas of the state. The continued transport of deer could potentially further spread the disease. Therefore, the department determined that the practice of trapping and transplanting deer is a potential mechanism for the spread of CWD.

The impact of an outbreak of CWD in Texas could be significant. Texas has one of the most extensive white-tailed deer herds in the United States and the quality of animals that come from Texas are known throughout the world. Over one-third of the 4 million white-tailed deer in Texas are found in about 25 per cent of the geographical area of Texas. Over \$600 million are spent by white-tailed deer hunters in rural communities each year, over half of which is spent in the Edwards Plateau, Pineywoods, and South Texas regions. Fully one quarter of this revenue is spent in the Edwards Plateau alone. Therefore, the department must remain vigilant in the face of potential disease threats to the resource.

The general function of the rule is to protect native deer from communicable diseases, thus ensuring the public of continued enjoyment of the resource, as well as the protection of the state's \$2.5 billion per year hunting industry. Specifically, the rule will function by: a) establishing unambiguous terminology concerning test results, b) stating clearly that the completion of permit activities will not be authorized in the event that CWD is detected in deer from any given trap site, c) establishing a specific period of validity for test samples, and d) describing the exact circumstances under which a test sample may be used more than once to satisfy the provisions of the section.

One commenter opposed adoption of the proposed rule and stated that the importation of deer should be prohibited. The

department disagrees with the comment and responds that the importation of deer is governed under regulations affecting scientific breeders. The department believes those regulations are sufficient to prevent the introduction of CWD within the state. The department also notes that deer cannot be imported into Texas under a Triple T permit. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rules by stating that the rules would make it too difficult to obtain a Triple T permit and thus would encourage people to move deer without obtaining a permit. The department disagrees with the comment and responds that given the demonstrable threat posed to the state's deer resource by CWD, the rules represent the simplest way to continue to allow the movement of deer while at the same time protecting the resource. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rules by stating that the department has no comprehensive statewide CWD plan and has not revealed its plan, if any, for CWD testing in state parks and wildlife management areas, making it seem like there is a dual standard. The commenter also stated the department seemed to be concentrating on communities such as Lakeway while ignoring scientific breeders, where the statistical likelihood of CWD is much higher. The department disagrees with the comment and responds as follows. The department does, in fact, have a comprehensive statewide CWD management plan, developed in consultation with several state and federal agencies, which has been and continues to be available to the public on the TPWD web site at [http://www.tpwd.state.tx.us/hunt/chronic\\_wasting\\_disease/](http://www.tpwd.state.tx.us/hunt/chronic_wasting_disease/). Additionally, the predomination of samples for CWD testing in the past two years have come from state parks, wildlife management areas, and other units of public hunting lands. The protocol for testing such deer is also described in the department's statewide management plan. Finally, the department's CWD monitoring efforts with respect to scientific breeder facilities are directly tied to herd health certification requirements imposed by the Texas Animal Health Commission on all cervids imported to Texas (deer held under scientific breeder permits cannot be obtained from the wild in Texas). No changes were made as a result of the comment.

The amendment is adopted under Parks and Wildlife Code, §43.061, which requires the commission to adopt rules for the content of wildlife stocking plans, certification of wildlife trappers, and the trapping, transporting, and transplanting of game animals and game birds under the subchapter, and §43.0611, which requires the commission to adopt rules for fees, applications, and activities, including limitations on the times of the activities, relating to permits for trapping, transporting, or transplanting white-tailed deer

*§65.102. Limitation of Applicability.*

(a) Until this section is repealed, no permits to trap, transport, and transplant white-tailed deer or mule deer shall be issued by the department unless a sample of adult deer from the trap site equivalent to 10% of the number of deer to be transported has been tested for chronic wasting disease by the Texas Veterinary Medical Diagnostic Laboratories.

(1) The department will not authorize trapping activities unless the test result for each deer in the minimum required sample is 'not detected.'

(2) The department will not issue a permit for any activity involving a trap site from which a 'detected' result for chronic wasting disease has been obtained.

(3) The sample size shall be no more than 40 or less than ten animals.

(4) The test results required by this section shall be presented to the department prior to the transport of any deer.

(5) All deer released shall be marked in one ear with a department-assigned identification number.

(6) A test result is not valid if the sample was collected or tested prior to October 1 of the previous permit year.

(7) Except as provided in paragraph (8) of this section, a test result shall not be used more than once to satisfy the requirements of this section.

(8) If a permittee traps, transports, and transplants fewer deer than are authorized in a given permit year, that permittee may trap, transport, and transplant the remaining deer the following year from the same trap site without having to provide new samples for testing; however, the person must apply for a new Triple T permit and must re-submit the test results from the previous year. If the application for a new Triple T permit specifies a number of deer greater than the remainder from the previous year, the requirements of paragraphs (1)-(4) of this subsection apply to the additional deer.

(b) Nothing in this section authorizes the take of deer. The take of deer for the purposes of this section shall be in accordance with applicable laws and regulations.

(c) This section does not apply to deer possessed pursuant to a permit to trap, transport, and process white-tailed deer.

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 September 21, 2004.

TRD-200405812

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Effective date: October 11, 2004

Proposal publication date: July 23, 2004

For further information, please call: (512) 389-4775



## SUBCHAPTER W. SPECIAL PERMITS

### 31 TAC §65.901

The Texas Parks and Wildlife Commission adopts new §65.901, concerning Cormorant Control Permit, with changes to the proposed text as published in the July 23, 2004, issue of the *Texas Register* (29 TexReg 7035). The change alters paragraph (1) to replace the word 'private' with the word 'specific.' The change is necessary because the department seeks to clarify that the intent of the regulation is to allow any entity to obtain a permit to control cormorants on land or waters controlled by that entity. The original wording in the proposal was interpreted by some to mean that cormorant control permits could not be obtained for use on lands and waters regulated or controlled by public entities or political subdivisions.

The double-crested cormorant (*Phalacrocorax auritus*) is a long-lived, colonial-nesting waterbird native to North America, and is the most abundant of six species of cormorants occurring in North America. The current continental population of double-crested cormorants is estimated to be 2 million birds, and is increasing. The diet of the double-crested cormorant is mainly fish. Adults eat an average of one pound per day, usually comprised of small (less than 6 inch) bottom dwelling or schooling "forage" fish. They are opportunistic and generalist feeders, preying on many species of fish, but concentrating on those that are easiest to catch. In many areas, the double-crested cormorant has become a nuisance species, causing damage to public fisheries resources.

The double-crested cormorant is a protected species under the Migratory Bird Treaty Act of 1918, and federal approval is required to take, possess, or disturb them. The U.S. Fish and Wildlife Service (Service) in 1998 allowed U.S. Department of Agriculture Wildlife Services to conduct winter roost control on double-crested cormorants. The Service has now established a public resource depredation order to allow state wildlife agencies, Tribes, and U.S. Department of Agriculture's Wildlife Services to conduct control activities for the protection of public resources in 24 states, including Texas. Under the order, TPWD may authorize agents to conduct lethal control activities. The new section is necessary to create a mechanism to protect public fisheries resources from depredation by double-crested cormorants. Under federal law, the state must annually report the number and location of cormorants killed under the depredation order; thus it is necessary to require permittees to record and report their activities on an annual basis, and to establish penalties for failure to obey permit conditions.

The new section will function by creating a permit for the conduct of cormorant control activities; by requiring any person who takes a cormorant under a permit to record the date and location of take and the number of cormorants killed; by requiring the person to whom a permit is issued to submit an annual report to the department accounting for all cormorants taken under a permit; by requiring all persons acting under a permit to abide by applicable federal law; and by establishing an offense for failure to abide by permit conditions.

The department received 33 comments opposing adoption of the rule as proposed. Of those comments, 21 articulated a specific reason or reasons for opposing adoption. Those comments and the agency responses follow.

One commenter opposed adoption of the proposed rule and stated that the rule was an erosion of public ownership, in effect transferring ownership from the public to private parties. The commenter also stated that if cormorant control is needed, the public must be allowed and invited to participate, not just private entities. The department disagrees with the comment and responds that the rule in no way alters the status of wildlife and in no way authorizes private ownership of wildlife. The department also notes that the rule as adopted allows any person to obtain a permit or engage in permitted activities, provided the person has the permission of the landowner where the control activities take place, which is no different than the burden facing any person who wishes to hunt game species. No changes were made as a result of this portion of the comment.

Six commenters opposed adoption of the proposed rule and stated that people should be able to kill cormorants without a permit. The department disagrees with the comments and responds that under the terms of the depredation order issued

by the U.S. Fish and Wildlife Service, the department must furnish data on the number and location of cormorants taken as nuisances. The only way to reliably gather such data is to create a permit and prescribe reporting requirements. No changes were made as a result of the comments.

One commenter opposed adoption of the proposed rule and stated that every duck or goose hunter should be required to kill at least one cormorant for every goose or duck taken. The department disagrees with the comment and responds that under the terms of the federal depredation order the state is required to report the number and location of cormorants taken as nuisances. If every hunter was required to take a cormorant for every duck or goose taken, there would be a complicated reporting process that would in all probability inconvenience most hunters. No changes were made as a result of the comments.

One commenter opposed adoption of the rule and stated that reports on the location and number of cormorants taken should be voluntary, not mandatory. The department disagrees with the comment and responds that under the terms of the federal depredation order the state is required to report the number and location of cormorants taken as nuisances. If the state allows people to act as agents of the state for the purpose of conducting control activities, those people must furnish reporting data. No changes were made as a result of the comment.

One commenter opposed adoption of the rule and stated that the rule should not be confined only to private lands. The department agrees with the comment and has made changes accordingly.

One commenter opposed adoption of the rule and stated that the department should just open a season on cormorants. The department disagrees with the comment and responds that cormorants are a protected species under federal law and cannot be legally hunted in the same fashion as game species. The depredation order is a special dispensation meant to address a specific management situation. No changes were made as a result of the comment.

One commenter opposed adoption of the rule and stated that Texas should follow the lead of the states that have opted out of U.S. Fish and Wildlife Service management and in turn identify them as a varmint. The department disagrees with the comment and responds that the double-crested cormorant is a federally protected species and no state has the unilateral authority under any provision of federal law to categorize them otherwise. No changes were made as a result of the comment.

One commenter opposed adoption of the rule and stated that the cormorant should not be wiped out if there is not a public health or safety hazard. The department agrees with the comment and responds that the depredation order is not intended to result in the extirpation of cormorants, just their localized control where they are causing problems. Were control activities to threaten the existence of the species, the control order would be quickly rescinded. No changes were made as a result of the comment.

Two commenters opposed adoption of the rule and stated that cormorants should be designated as nuisances. The department agrees with the comments, and responds that the U.S. Fish and Wildlife Service, in the depredation order, has designated the double-crested cormorant to be a nuisance species in certain states. However, control activities under federal law must be performed under a permit. No changes were made as a result of the comment.

One commenter opposed adoption of the rule and stated that there is no need to track the number or location of cormorants taken under the depredation order. The department disagrees with the comment and responds that under the terms of the federal depredation order the state is required to report the number and location of cormorants taken as nuisances, a requirement that is not negotiable. No changes were made as a result of the comment.

One commenter opposed adoption of the rule and stated that control permits should be valid on large bodies of water with public access. The department agrees with the comment and responds that any entity with legal authority over a body of water may obtain a control permit. The department has altered the rule to make this clear.

One commenter opposed adoption of the rule and stated that recordkeeping activities would provide meaningless data as cormorants will never be designated as a "game bird" under current TPWD definitions and that private clubs should be exempted from any proposed rules which attempt to exert public recordkeeping requirements on the club itself or its membership group. The department disagrees with the comment and responds that the data collected by the department and submitted to the U.S. Fish and Wildlife Service are used to comply with federal obligations under the Migratory Bird Treaty Act, which is the basis for the regulation of migratory birds in this country. The department notes that without the promise of such data, the depredation order would not have been possible. No changes were made as a result of the comment.

One commenter opposed adoption of the rule and stated that the permit should not authorize unlimited take of cormorants. The department disagrees with the comment and responds that cormorants tend to avoid or move from areas where control activities are conducted, which is the point of the depredation order. It is unlikely, given this behavioral trait, that cormorant populations will be negatively affected. No changes were made as a result of the comment.

One commenter opposed adoption of the rule and stated that the migratory bird stamp should be all that is required for a person to take cormorants. The department disagrees with the comment and responds that revenue from sales of the state waterfowl stamp is dedicated by state law to the conservation of waterfowl, i.e., certain species of game birds. Since the cormorant is not a game bird under federal law (which means it cannot be declared a game bird under state law), the cost of administering the control permit program could not legally be paid for out of waterfowl stamp funds. No changes were made as a result of the comment.

One comment opposed adoption of the rule and stated that control activities should not be restricted to daylight hours. The department disagrees with the comment and responds that federal law restricts control activities to daylight hours only. No changes were made as a result of the comment.

One commenter opposed adoption of the rule and stated that that the department is misleading the public by claiming that federal law requires the department to issue permits when in fact there is no such requirement. The department disagrees with the comment and responds that although the state is under no legal obligation to be a participant in depredation activities, the rule is necessary in order for persons affected by nuisance cormorants to control cormorant numbers. No changes were made as a result of the comment.

One commenter opposed adoption of the rule and stated that the Code of Federal Regulations (CFR) citation contained in the proposal preamble was fictitious. The department disagrees with the comment and responds that the federal rulemaking in question exists and was published in the Federal Register on October 8, 2003, Vol.68, No. 195, pp. 58034-58039. No changes were made as a result of the comment.

One commenter opposed adoption of the rule and stated that commercial operations did not need protection. The department disagrees with the comment and responds that a depredation order affecting aquaculture facilities was issued previous to the order contemplated by this rulemaking. In any event, the rule in question is intended to protect public fisheries resources. No changes were made as a result of the comment.

The department received 259 comments supporting adoption of the proposed rule.

The Texas Wildlife Association commented in favor of adoption.

The new rule is adopted under the authority of Parks and Wildlife Code, §67.0041, which authorizes the issuance of permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species, and authorizes the commission to set a fee for a permit.

*§65.901. Cormorant Control Permit.*

A permit issued under this section is valid only for the take of double-crested cormorants and does not authorize the wounding, disturbing, or taking of any other bird which otherwise is protected by any applicable provision of the Parks and Wildlife Code or a regulation of the department.

(1) The department may issue a permit authorizing the take of double-crested cormorants (*Phalacrocorax auritus*) on specific lands and waters.

(2) Each permit is valid only for the tract or tracts of land for which it is issued.

(3) Each permit shall be issued to a named individual who is the owner of or authorized agent for the tract of land for which the permit is issued.

(4) Each person to whom a permit is issued shall complete and submit an annual report on a form supplied by the department by no later than August 1 of each year.

(5) Any person in possession of a valid hunting license may conduct control activities on double-crested cormorants, provided that person also possesses upon their person a copy of a permit issued for the tract of the land where the control activities take place. The copy of the permit must be signed in person by the person to whom the permit was issued.

(6) The department will not issue a permit to any person who has, within the three years immediately prior to an application for a permit, been convicted of or subject to deferred adjudication for a violation of the Texas Parks and Wildlife Code or a regulation of the department.

(7) Each person conducting control activities under the provisions of this section shall comply with all applicable provisions of the federal regulations located at 50 CFR, Part 21, §21.48, including restrictions on means and methods, lawful shooting hours, and disposal of carcasses.

(8) It is an offense to:

(A) take any bird other than a double-crested cormorant under a permit issued under this section;

(B) use a permit on any tract of land other than that for which it was issued; or

(C) fail to abide by any condition of a permit issued under the provisions of this section.

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 September 20, 2004.

TRD-200405793

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Effective date: October 10, 2004

Proposal publication date: July 23, 2004

For further information, please call: (512) 389-4775



## CHAPTER 69. RESOURCE PROTECTION SUBCHAPTER B. FISH AND WILDLIFE VALUES

### 31 TAC §69.22, §69.30

The Texas Parks and Wildlife Commission adopts amendments to §69.22 and §69.30, concerning the department's rules for recovering monetary damages from persons who take wildlife or fisheries resources in violation of the law, without changes to the proposed text as published in the July 23, 2004, issue of the *Texas Register* (29 TexReg 7037).

In 1985, the Texas Legislature amended the Parks and Wildlife Code (the Code) to provide that a person who kills, catches, takes, possesses, or injures any fish, shellfish, reptile, amphibian, bird, or animal in violation of the code or a proclamation or regulation adopted under the code is liable to the state for the value of each fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured. Since that time, the department has actively sought full restitution for fish and wildlife loss occurring as a result of unlawful activities. The current values by which restitution amounts for wildlife species are calculated have not been changed since 1985, with the exception of the rules governing the value of trophy wildlife species, which were adopted in 1996. During the intervening time, economic factors such as inflation and real dollar equivalence (relative to the values established in 1985 and 1996) have eroded the deterrent power of the current restitution values for wildlife species. In addition, the cost to the department of administering and enforcing the rules has increased for the same economic reasons. Therefore, the department intends to adjust the basic recovery values (upon which the calculations of civil recovery are based) for wildlife species. By statute, the recovery value of injured or destroyed wildlife is determined on a per animal basis. For each animal, a value is assigned for each of eight scoring criteria. Those scores are summed to create a total criteria score, which is then multiplied by a weighting factor to adjust for variance in public demand and/or perception of value. The adjusted

criteria score has a corresponding recovery value, which the violator is then assessed. The value of trophy wildlife species is determined by a formula based on the animal's Boone and Crockett score.

Research indicates that the Consumer Price Index (CPI) has increased 1.677 points between 1986 and 2003. The proposed amendments would increase the criteria score values to reflect the change in the CPI, which is necessary to maintain recovery values that are similar to the original values relative to current economic factors. In the case of trophy animals, the rule reflects the approximate current market value of trophy-quality hunting opportunity for white-tailed deer, mule deer, pronghorn antelope, and desert sheep. The values were produced by multiplying the current values by 1.677, which is the amount that the Consumer Price Index has increased since 1985, the last year in which wildlife values were adjusted. For trophy species, the dollar-value coefficient for each species was obtained by deriving a function for the curve from the lowest Boone and Crockett score for which trophy restitution can be assessed through the highest Boone and Crockett score, intersecting the mean market values for each, which were obtained by consulting department personnel, landowners, and published advertising for trophy hunting opportunity.

The amendments also remove references to elk, because the Texas Legislature in 1997 designated elk as an exotic species and the department no longer possesses any regulatory authority with respect to that species. The amendment to §69.30 also creates separate assessment categories for white-tailed deer and mule deer. In addition, the department wishes to note that when the original rule was published, the software of the time was unable to reproduce the superscript notation to indicate where the squaring function was to be applied. The amendment to §69.30 rectifies that situation.

The amendment to §69.22, concerning Wildlife-Recovery Values, will function by changing the various monetary values across the continuum of the scoring range used in the determination of the restitution value of wildlife species.

The amendment to §69.30, concerning Trophy Wildlife Species, changes the dollar-value coefficient used to calculate the final restitution value for trophy white-tailed or mule deer, pronghorn antelope, and desert bighorn sheep, and places white-tailed deer and mule deer in separate categories.

The department received 33 comments opposing adoption of the proposed rule. Ten commenters offered a specific reason or reasons for opposition. Those comments and the department's response follow.

One commenter opposed adoption of the rules and stated that increases in the prices of hunting and fishing licenses since 1985 should more than cover the department's expenses. The department disagrees with the comment and responds that the elevation of civil penalties for resource damage is not motivated by issues of revenue enhancement. The sole motivation for the rules is the statutory obligation of the department to recover the value of illegally taken wildlife resources on behalf of the citizens of the state, to whom they belong. As the market value of certain species rises, the concomitant value of the resource for purposes of civil recovery should rise accordingly. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the deterrent power of the current rules is sufficient, and that

additional penalties or increases would be oppressive. The department disagrees with the comment and responds that the increased amounts for civil recovery values reflect the department's statutory obligation to recover the value of illegally taken wildlife resources. As the market value of certain species rises, the value for purposes of civil recovery should rise accordingly. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rules and stated that the department provided no specific information as to how the worth of wildlife resources is determined. The department disagrees with the comment and responds that the preamble of the proposal clearly explained the rationale used by the department in determining the increases in civil recovery values; additionally, the rule text of §69.22 articulates the eight categories of scoring criteria used to calculate civil recovery values. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rule and stated that 'current market value' is a gray area that cannot be easily defined. The department disagrees with the comment and responds that the department is under a statutory obligation to recover the value of illegally taken wildlife resources. Thus, since a value must be established, relying upon the market value is appropriate. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rule and stated that the current restitution values were sufficient. The department disagrees with the comment and responds that since recovery values are an expression of the putative worth of wildlife resources to the people of the state, it is appropriate that they be adjusted from time to time to maintain an approximately constant relationship to economic conditions.

One commenter opposed adoption of the proposed rule and stated that the proposed recovery values should be reserved for felony violations only. The department disagrees with the comment and responds that the state's obligation to recover the value of resources taken in violation of the law is not contingent upon the severity of the violation. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rule and stated that it was just an attempt to raise additional revenue for the state. The department disagrees with the comment and responds that under Parks and Wildlife Code, §12.301, any person who takes a wildlife resource in violation of the law is liable to the state for the value of the resource. Therefore, the department by law must seek to recover that value. This is accomplished by utilizing a reasonable methodology for determining the value of various species of wildlife, which must be adjusted from time to time to maintain economic relevance. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rule and stated that it was not enough. The commenter stated that the increase should be 300%. The department disagrees with the comment and responds that the intent of the rule is to recover damages in an amount that reflects the approximate market value of the resource. No changes were made as a result of the comment.

One person opposed adoption of the proposed rule and stated that the state should recover damages from birdwatchers and photographers who destroy vegetation. The department disagrees with the comment and responds that the Parks and Wildlife Code does not provide authority for the department to

regulate vegetation disturbance of the type mentioned by the commenter. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rule and stated that an animal's worth does not increase or decrease in value, and that to use commercial trophy fees as a guide is terrible. The department disagrees with the comment and responds that although the assignment of a monetary value to wildlife is in some respects problematic it is by no means arbitrary, as the valuation stipulated in the rule is contingent on predetermined criteria to which much thought has been given. The department believes that it is entirely appropriate to use market values in determining the recovery values for specimens that are affected by market forces. No changes were made as a result of the comment.

The department received 233 comments supporting adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, §12.302, which requires the commission to adopt rules to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds, and animals.

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 September 23, 2004.

TRD-200405881

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Commission

Effective date: October 13, 2004

Proposal publication date: July 23, 2004

For further information, please call: (512) 389-4775



## PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

### CHAPTER 527. REMOVAL OF A DISTRICT DIRECTOR

#### 31 TAC §§527.1 - 527.7

The Texas State Soil and Water Conservation Board (State Board) adopts new §§527.1 - 527.7, concerning the removal of soil and water conservation district directors in accordance with provisions of the Agriculture Code of Texas, §201 without changes to the text as proposed in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7916). The text of the rules will not be republished.

These new rules are adopted to provide for the implementation of a procedure, as authorized under §201.076(e), Agriculture Code, for a soil and water conservation district (SWCD), if warranted, to petition the State Board for the removal of a district director, if and when facts lead to a determination the district director: neglects the duty of office; is unable, due to illness or disability, to discharge the duties of office; is guilty of malfeasance

in office; or is legally disqualified from serving as a district director. Currently, no rules exist to implement this function should it become needed.

No comments were received regarding adoption of the new rules.

The new rules are adopted under §201.020, Agriculture Code, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code and §201.076(e) which provides that the State Board, following a notice and hearing, may remove a district director under specific circumstances.

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 September 24, 2004.

TRD-200405887

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Effective date: October 14, 2004

Proposal publication date: August 13, 2004

For further information, please call: (254) 773-2250

## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER A. GENERAL RULES

###### 34 TAC §3.3

The Comptroller of Public Accounts adopts an amendment to §3.3, concerning contract examination program, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7918).

The adopted amendment clarifies and conforms the provisions of the rule so that it will comply with statutory and administrative requirements. The change from term "auditor" to "examiner" is intended to clarify that persons who are not Certified Public Accountants may perform examinations of Texas taxpayers as independent contractors. This change is not to exclude Certified Public Accountants from also performing examining services.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.0045, which provides the comptroller with the authority to employ the services of persons to assist with the administration of the Tax Code and Tax Code, §111.002, which provides the comptroller with authority to promulgate rules for enforcement of collection and payment of taxes.

The amendment implements Tax Code §111.0045.

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 September 23, 2004.

TRD-200405867

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 13, 2004

Proposal publication date: August 13, 2004

For further information, please call: (512) 475-0387

## SUBCHAPTER B. NATURAL GAS

### 34 TAC §3.21

The Comptroller of Public Accounts adopts an amendment to §3.21, concerning exemption or tax reduction for high-cost natural gas, without changes to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7647).

This section is being amended pursuant to House Bill 2425, 78th Legislature, 2003, which added a 24 month time limitation on refund eligibility under Tax Code, §201.057(i).

No comments were received regarding adoption of the amendment.

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

The amendment implements Tax Code, §201.057.

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 September 22, 2004.

TRD-200405832

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 12, 2004

Proposal publication date: August 6, 2004

For further information, please call: (512) 475-0387

## SUBCHAPTER O. STATE SALES AND USE TAX

### 34 TAC §3.285

The Comptroller of Public Accounts adopts an amendment to §3.285, concerning resale certificates; sales for resale, without changes to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7650).

The adopted amendment updates the rule in subsection (g)(4) to reflect that under Tax Code, §151.152 the comptroller may authorize the use of electronic signatures on resale certificates.

No comments were received regarding adoption of the amendment.



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

The amendment implements Tax Code, §151.152.

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 September 22, 2004.

TRD-200405823

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 12, 2004

Proposal publication date: August 6, 2004

For further information, please call: (512) 475-0387



### 34 TAC §3.299

The Comptroller of Public Accounts adopts an amendment to §3.299, concerning newspapers, magazines, publishers, exempt writings, without changes to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7652).

This section is being amended to implement House Bill 2424, 78th Regular Session of the Texas Legislature. Effective October 1, 2003, Tax Code §151.319(f) is amended to change the average sales price per copy threshold for a newspaper to be exempt from .75 cents to \$1.50. The new language is found in subsection (a)(1)(B) of the proposed section.

No comments were received regarding adoption of the amendment.

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

The amendment implements Tax Code, Chapter 151.

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 September 22, 2004.

TRD-200405824

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 12, 2004

Proposal publication date: August 6, 2004

For further information, please call: (512) 475-0387



### 34 TAC §3.300

The Comptroller of Public Accounts adopts an amendment to §3.300, concerning manufacturing, custom manufacturing, fabricating, and processing, without changes to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7652).

Tax Code, §151.318 was amended to provide an exemption for pharmaceutical biotechnology cleanrooms and equipment that are installed as part of the construction of a new facility with a value of at least \$150 million and on which construction began after July 1, 2003, and before August 31, 2004. The adopted amendment updates the rule to reflect this change to Tax Code, §151.318 by amending language in subsections (a)(14), (f), and by adding subsection (k)(3)(F).

No comments were received regarding adoption of the amendment.

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

The amendment implements Tax Code, §151.318.

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 September 22, 2004.

TRD-200405825

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 12, 2004

Proposal publication date: August 6, 2004

For further information, please call: (512) 475-0387



### 34 TAC §3.318

The Comptroller of Public Accounts adopts an amendment to §3.318, concerning water-related exemptions, without changes to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7657).

The adopted amendment reflects the name change of the Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality (TCEQ) and clarifies existing policies. The TCEQ name change is reflected in the amendment to subsection (a)(7). Subsection (b) is amended to clarify that the exemption is for equipment, services, or supplies used solely for qualified activities.

No comments were received regarding adoption of the amendment.

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

The amendment implements Tax Code, §151.355.

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 September 22, 2004.

TRD-200405826

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 12, 2004

Proposal publication date: August 6, 2004

For further information, please call: (512) 475-0387



## SUBCHAPTER S. MOTOR FUEL TAX

### 34 TAC §3.431

The Comptroller of Public Accounts adopts new §3.431, concerning refund of gasoline and diesel fuel tax to transit company, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7921).

The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides a definition of transit company eligible to claim partial refund, sets out guidelines for obtaining a partial refund of tax paid on gasoline and diesel fuel, and provides information concerning the time limitation for requesting a refund.

No comments were received regarding adoption of the new section.

The new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The new rule implements Tax Code, §§162.001, 162.125, and 162.227.

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 September 23, 2004.

TRD-200405868

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 13, 2004

Proposal publication date: August 13, 2004

For further information, please call: (512) 475-0387



### 34 TAC §3.433

The Comptroller of Public Accounts adopts new §3.433, concerning incidental highway travel, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7921).

The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162,

relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides a definition of incidental travel on the public highway, for reporting incidental highway travel by dyed diesel fuel bonded users and records required.

No comments were received regarding adoption of the new section.

The new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The new rule implements Tax Code, §162.125 and §162.227.

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 September 23, 2004.

TRD-200405869

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 13, 2004

Proposal publication date: August 13, 2004

For further information, please call: (512) 475-0387



### 34 TAC §3.435

The Comptroller of Public Accounts adopts new §3.435, concerning metering devices used to claim refund of tax on gasoline used in power take-off and auxiliary power units, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7922).

The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides design specifications for a metering device, sets out the conditions under which a metering device is not acceptable, and describes the records that are required when a taxpayer uses a metering device as a basis for credit or refund claim.

No comments were received regarding adoption of the new section.

The new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The new rule implements Tax Code, §162.125.

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 September 23, 2004.

TRD-200405870

Martin Cherry  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
Effective date: October 13, 2004  
Proposal publication date: August 13, 2004  
For further information, please call: (512) 475-0387



### 34 TAC §3.436

The Comptroller of Public Accounts adopts new §3.436, concerning liquefied gas dealer licenses, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7923).

The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides information concerning who must obtain a liquefied gas dealer license, when deliveries of liquefied gas are taxable, and it sets out reporting requirements.

No comments were received regarding adoption of the new section.

The new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The new rule implements Tax Code, §§162.302, 162.304, 162.306, and 162.310.

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 September 23, 2004.

TRD-200405871  
Martin Cherry  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
Effective date: October 13, 2004  
Proposal publication date: August 13, 2004  
For further information, please call: (512) 475-0387



### 34 TAC §3.439

The Comptroller of Public Accounts adopts new §3.439, concerning motor fuel transportation documents, with changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7924). The change is necessary to reflect the correct reference to the Water Code in subsection (c)(14).

The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides information concerning motor fuel transportation documents, sets out the required distribution of transportation documents, and explains conditions under which transportation documents are not required.

No comments were received regarding adoption of the new section.

The new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The new rule implements Tax Code, §§162.004, 162.016, 162.115, and 162.216.

§3.439. *Motor Fuel Transportation Documents* (Tax Code, §§162.004, 162.016, 162.115, and 162.216).

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The words and terms used in this section have the same meaning as those defined in Tax Code Chapter 162.

(b) Manifest required.

(1) A terminal operator or an operator of a bulk plant must give a shipping document or cargo manifest to the person who operates the barge, vessel, railroad tank car, or transport vehicle into which motor fuel is loaded at the terminal rack or bulk plant rack. The terminal operator or operator of the bulk plant must keep copies of shipping documents for at least four years.

(2) A motor fuel transporter must carry the shipping document or cargo manifest in the transport vehicle for which the document was issued when transporting the fuel described in the document. The motor fuel transporter must keep copies of shipping documents for at least four years.

(c) Information required. The cargo manifest or shipping document shall be issued in sufficient quantities to provide coverage for the record keeping requirements of all parties involved in the transaction and shall contain the following information:

(1) the name and physical address or Terminal Code Number assigned by the United States Internal Revenue Service of the terminal or the name and physical address of the bulk plant at which the cargo was loaded;

(2) the date of loading or movement;

(3) the type of motor fuel that is cargo, and if the fuel is dyed diesel fuel, a notice that states "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use";

(4) the number of gallons:

(A) in net temperature-adjusted gallons when loaded from a terminal; or

(B) in gross gallons if loaded from a bulk plant;

(5) the percentage of ethanol or methanol contained in the motor fuel;

(6) the types and percentages of cosolvents contained in the motor fuel, if methanol has been added;

(7) the percentage of water or biodiesel blended with petroleum diesel fuel;

(8) the destination of the cargo;

(9) the name of the seller, consignor, or shipper;

(10) the name, federal employer identification number, license, or permit number if applicable, and physical address of the purchaser or consignee. If the federal identification number, license, or

permit number, and physical address of the purchaser or consignee are not printed on the cargo manifest or shipping document, then that information must be in the records of the terminal or bulk plant operator and available for review;

(11) the name and the federal employer identification number or social security number of the carrier. If the federal identification number or social security number of the carrier is not printed on the cargo manifest or shipping document, then that information must be in the records of the terminal or bulk plant operator and made available for review when requested;

(12) the method of transportation:

- (A) if by truck, the license or unit number;
- (B) if by barge or boat, the name of the vessel; or
- (C) if by railway, the rail car number and initial;

(13) the name of the person responsible for payment of the tax as given to the terminal operator if different from the licensed supplier, permissive supplier, distributor, or importer. If this information is not printed on the manifest or shipping document, it must be in the records of the terminal operator and made available for review when requested;

(14) the amount of delivery fee assessed under Water Code, §26.3574; and

(15) any other information the comptroller deems necessary for the proper administration of Tax Code, Chapter 162.

(d) Waybills or bills of lading. If a carrier transports motor fuel for which a waybill is required under the regulations of the Texas Railroad Commission, or a bill of lading is required under the regulations of the United States Department of Transportation, or if similar documentation is required by another regulatory agency, these documents may be used in lieu of the manifest or shipping document prescribed in this section, so long as the waybill, bill of lading, or similar document lists the information described in subsection (c) of this section.

(e) Delivery of cargo manifest or shipping document. One copy of the shipping document or cargo manifest shall be delivered to the purchaser when the fuel is delivered, and the seller shall retain one copy. If a motor fuel transporter delivers the fuel, the motor fuel transporter must also retain one copy. The person to whom the motor fuel is delivered must keep copies of shipping documents for at least four years from the date of delivery.

(1) If the motor fuel transporter receives cargo at different locations, a notation of the fuel loaded at each location must be made on the cargo manifest by the motor fuel transporter or a separate manifest that covers the fuel or blend material loaded at each location must be issued by the terminal operator or the operator of the bulk plant or the seller of the blend material.

(2) If the motor fuel transporter off-loads cargo at various locations, then the motor fuel transporter must note the fuel off-loaded on the required cargo manifest, or a customer invoice indicating the location and amount of motor fuel that has been off-loaded at each location. If separate invoices are used, then the invoices must be attached to or cross referenced to the manifest for record purposes. The cargo manifest or a copy of the customer invoice shall be retained with the transporting vehicle until the motor fuel is removed from the cargo tank.

(3) A cargo manifest is not required if an end user transports motor fuel in the user's own cargo tank and the fuel is for the end user's use and not for resale.

(4) If the delivery fee assessed under Water Code, §26.3574, is not shown on the cargo manifest, it must be shown on the invoice that covers the delivery, and be cross referenced to the manifest or shipping document for record purposes.

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 September 23, 2004.

TRD-200405872  
Martin Cherry  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
Effective date: October 13, 2004  
Proposal publication date: August 13, 2004  
For further information, please call: (512) 475-0387



### 34 TAC §3.440

The Comptroller of Public Accounts adopts new §3.440, concerning on-highway travel of farm machinery, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7925).

The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides circumstances for exempt on-highway travel by farm machinery.

No comments were received regarding adoption of the new section.

The new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The new rule implements Tax Code, §162.103 and §162.203.

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 September 23, 2004.

TRD-200405873  
Martin Cherry  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
Effective date: October 13, 2004  
Proposal publication date: August 13, 2004  
For further information, please call: (512) 475-0387



### 34 TAC §3.447

The Comptroller of Public Accounts adopts new §3.447, concerning reports, due dates, bonding requirements, and qualifications for annual filers, with changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7925). The change is to correct subsection (d). The

agency's proposed submission omitted the word "is" between the words "bond" and "not" in the last sentence.

The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides the reporting and bonding requirements and sets out the criteria for filing annually.

No comments were received regarding adoption of the new section.

The new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The amendment implements Tax Code, §§162.212, 162.215, 162.302, and 162.310.

§3.447. *Reports, Due Dates, Bonding Requirements, and Qualifications for Annual Filers (Tax Code, §§162.212, 162.215, 162.302, and 162.310).*

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Reports required.

(1) A dyed diesel fuel bonded user with an average quarterly tax liability of \$600 or less has the option to file reports each quarter or each year. After a dyed diesel fuel bonded user has selected a method of reporting, the method cannot be changed without permission from the comptroller unless the dyed diesel fuel bonded user's tax liability for a year exceeds \$2,400, or the comptroller deems change otherwise necessary. If the dyed diesel fuel bonded user's diesel fuel tax liability during a year exceeds \$2,400, the dyed diesel fuel bonded user must file a report for all previous quarters of that year. Future reports must be filed on a quarterly basis.

(2) Dyed diesel fuel bonded users with an average quarterly tax liability of more than \$600 must file quarterly reports.

(3) Liquefied gas dealers and liquefied gas interstate truckers must file annual reports.

(c) Due dates.

(1) The due date for all annual reports is January 25th.

(2) If the report is filed by the due date, a request for refund of taxes paid on liquefied gas used out-of-state must be made on the annual report.

(d) Bonding requirements. Dyed diesel fuel bonded users that report annually will be required to post security in the amount of two times the annual tax liability on taxable uses of diesel fuel. The minimum bond is \$10,000. The bond may be waived if it is determined that the bond is not necessary to protect the state.

(e) Qualifications.

(1) A license holder that is going out of business or whose license is cancelled must file a report on or before the 25th day of the month following the calendar quarter in which business ceased.

(2) Dyed diesel fuel bonded users will be notified each March of any filing status change based on the dyed diesel fuel bonded user's previous-year reports.

(f) Liquefied gas reports. Licensed liquefied gas dealers who are also liquefied gas interstate truckers registered under a multistate

tax agreement must file their liquefied gas dealer report with the same frequency that they report their interstate trucker operations under the multistate tax agreement.

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 September 23, 2004.

TRD-200405874

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 13, 2004

Proposal publication date: August 13, 2004

For further information, please call: (512) 475-0387



## SUBCHAPTER Z. COASTAL PROTECTION FEE

### 34 TAC §3.692

The Comptroller of Public Accounts adopts an amendment to §3.692, concerning definitions, reporting requirements and amount of fee, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7926).

This section is being amended to take out the language requiring a monthly report when the fee is suspended.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Natural Resources Code, §40.155 and §40.156.

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 September 22, 2004.

TRD-200405827

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 12, 2004

Proposal publication date: August 13, 2004

For further information, please call: (512) 475-0387



## SUBCHAPTER BB. BATTERY SALES FEE

### 34 TAC §3.711

The Comptroller of Public Accounts adopts an amendment §3.711, concerning collection and reporting requirements, without changes to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7657).

The purpose of the amendment is to remove references to the waste tire recycling fee from the rule.

No comments were received regarding adoption of the amendment.

This amended section is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amended rule implements Health and Safety Code, §361.138.

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 September 22, 2004.

TRD-200405828

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 12, 2004

Proposal publication date: August 6, 2004

For further information, please call: (512) 475-0387



## SUBCHAPTER DD. OIL FIELD CLEANUP REGULATORY FEE

### 34 TAC §3.731

The Comptroller of Public Accounts adopts an amendment to §3.731, concerning imposition and collection of the oil fee, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7927).

This section is being amended pursuant to House Bill 3442, 78th Legislature, 2003. House Bill 3442 amends Natural Resources Code, §81.116, by adding language to require the payment of the fee on crude oil approved for the severance tax Enhanced Oil Recovery Project Exemption, Two-Year Inactive Well Exemption, Three-Year Inactive Well Exemption, Co-Production Project Exemption, Tax Credit for Incremental Production Technique Exemption and the Texas Experimental Research and Recovery Activity Exemption (TERRA).

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Natural Resource Code, §§81.111, 81.114, and 81.116.

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 September 22, 2004.

TRD-200405829

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 12, 2004

Proposal publication date: August 13, 2004

For further information, please call: (512) 475-0387



### 34 TAC §3.732

The Comptroller of Public Accounts adopts an amendment to §3.732, concerning reporting requirements for the gas fee, without changes to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7658).

This section is being amended pursuant to House Bill 3442, 78th Legislature, 2003. House Bill 3442 amends Natural Resources Code, §81.117, by adding language to require the payment of the fee on gas approved for the severance tax Two-Year Inactive Well Exemption, Three-Year Inactive Well Exemption, Co-Production Project Exemption, Tax Credit for Incremental Production Technique Exemption, Tax Reduction for High-Cost Gas, Flared Gas Exemption and the Texas Experimental Research and Recovery Activity Exemption (TERRA).

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Natural Resource Code, §§81.111, 81.114, and 81.117.

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 September 22, 2004.

TRD-200405830

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 12, 2004

Proposal publication date: August 6, 2004

For further information, please call: (512) 475-0387



## CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

### SUBCHAPTER D. CLAIMS PROCESSING-- PAYROLL

#### 34 TAC §5.36

The Comptroller of Public Accounts adopts new §5.36, concerning deductions for paying membership fees to certain law enforcement employee organizations, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7930). A brief description of the new section follows.

Subsection (a) defines important terms used throughout the section.

Subsection (b)(1) specifies how a state employee may authorize a deduction to pay a membership fee to an eligible organization. Subsection (b)(2) specifies how a state employee may change the amount of a deduction. Subsection (b)(3) covers the sufficiency of salary or wages to support a deduction. Subsection (b)(4) governs the timing of deductions. Subsection (b)(5) governs the regularity of deductions. Subsection (b)(6) covers retroactive deductions. Subsection (b)(7) governs the cancellation of deductions. Subsection (b)(8) governs the interagency transfer of a state employee who has authorized a deduction.

Subsection (c)(1) governs the effective date of a deduction authorization form. Subsection (c)(2) specifies when an authorization form may or must be returned. Subsection (c)(3) governs the copying of authorization forms.

Subsection (d)(1) specifies the effective date of cancellation forms and cancellation notices. Subsection (d)(2) specifies when a cancellation form or a cancellation notice may or must be returned. Subsection (d)(3) governs the copying of cancellation forms and cancellation notices.

Subsection (e) governs the format and distribution of authorization forms and cancellation forms.

Subsection (f) specifies the procedural requirements for certifying state employee organizations, including the required content of a state employee organization's request for the comptroller to certify the organization.

Subsection (g) specifies the substantive requirements for certifying state employee organizations, including the membership requirement and the comptroller's notification about the approval or disapproval of certification applications.

Subsection (h) specifies the effective date of the certification of state employee organizations.

Subsection (i)(1) requires the comptroller to pay deducted membership fees to an eligible organization by electronic funds transfer unless the comptroller determines it is infeasible to do so. Subsection (i)(2) governs the comptroller's payment of deducted membership fees by warrant. Subsection (i)(3) governs the payment of deduction membership fees by an institution of higher education to an eligible organization. Subsection (i)(4) requires membership fee payment records to be reconciled and corrected, if necessary.

Subsection (j) makes it clear that the section does not prohibit the chief administrator of a state agency from permitting or prohibiting solicitation by an eligible organization on the premises of the agency.

Subsection (k)(1) requires an eligible organization to disseminate certain information to its representatives and employees. Subsection (k)(2) requires an eligible organization to notify the comptroller whenever certain information about the organization changes. Subsection (k)(3) imposes certain duties on the primary contact of an eligible organization. Subsection (k)(4) requires the Texas Identification Number of an eligible organization to appear on all correspondence from the organization to the comptroller or a state agency. Subsection (k)(5) specifies the requirement for an eligible organization to deliver authorization forms to the appropriate state agency. Subsection (k)(6) governs the acceptance of cancellation forms and cancellation notices by an eligible organization and the requirement for the organization to deliver those forms and notices to the appropriate state agency. Subsection (k)(7) requires an eligible organization to refund an excessive payment of membership fees deducted under this section.

Subsection (l)(1) authorizes a state agency to report to the comptroller a violation of this section that the agency believes has been committed. Subsection (l)(2) imposes certain requirements on a state agency with respect to authorization forms. Subsection (l)(3) requires an employer to submit certain reports to eligible organizations.

Subsection (m) governs the voluntary or involuntary termination of the certification of a state employee organization.

Subsection (n) governs the administrative fees charged by an institution of higher education for making deductions under this section.

No comments were received regarding adoption of the new section.

The new section is adopted under Government Code, §659.104(a), which authorizes the comptroller to adopt rules to administer the eligible state employee membership fee program authorized by Government Code, Chapter 659, Subchapter G.

The new section implements Government Code, §659.1031.

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 September 23, 2004.

TRD-200405875

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: October 13, 2004

Proposal publication date: August 13, 2004

For further information, please call: (512) 475-0387

### SUBCHAPTER E. CLAIMS PROCESSING-- PURCHASE VOUCHERS

#### 34 TAC §5.56

The Comptroller of Public Accounts adopts amendments to §5.56, concerning appropriation year determination, without changes to the proposed text as published in the August 13,

2004, issue of the *Texas Register* (29 TexReg 7936). The purposes of the amendments are as follows.

The primary purpose is to address legislative changes made during the 78th regular session of the legislature. House Bill 2425 substantively amended Government Code, §2113.205, to enable the comptroller to authorize a state agency to use money appropriated for a particular fiscal year to pay the entire cost or amount of a service, including an Internet connection, regardless of whether the service is provided over more than one fiscal year.

The other purpose of the amendments of §5.56 is to update the section in non-substantive ways, including the deletion of provisions that are no longer necessary or that merely repeat the General Appropriations Act or general law.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Government Code, §2101.035(a), which authorizes the comptroller to adopt rules for the effective operation of the uniform statewide accounting system. The amendments are also proposed under Government Code, §2113.205(d), which authorizes the comptroller to adopt rules to administer that section.

The amendments implement the General Appropriations Act and the Government Code, §2101.035 and §2113.205.

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 September 27, 2004.

TRD-200405904  
Martin Cherry  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
Effective date: October 17, 2004  
Proposal publication date: August 13, 2004  
For further information, please call: (512) 475-0387

◆ ◆ ◆  
**SUBCHAPTER N. FUNDS ACCOUNTING--  
ACCOUNTING POLICY STATEMENTS**

**34 TAC §5.160**

The Comptroller of Public Accounts adopts to incorporate by reference an amendment to §5.160, incorporation by reference; accounting policy statements 2002-2003, without changes to the proposed text as published in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7286).

The accounting policy statements are issued to provide procedures and guidelines to state agencies for the effective operation of the Uniform Statewide Accounting System (USAS) and for preparation of the annual financial report. Each accounting policy statement contains legal references, a background section, comptroller requirements and state agency requirements, and division contact if more information is needed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §§403.011, 2101.012, 2101.035 and 2101.037 which provide the comptroller with the authority to prescribe rules and procedures relating to the operation of the Uniform Statewide Accounting System, the preparation of the annual financial report and supervising the state's fiscal concerns.

The adoption implements Government Code, §§403.011, 2101.012, 2101.035, and 2101.037.

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 September 24, 2004.

TRD-200405884  
Martin Cherry  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
Effective date: October 14, 2004  
Proposal publication date: July 30, 2004  
For further information, please call: (512) 475-0387

◆ ◆ ◆  
**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 6. TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE**

**CHAPTER 152. CORRECTIONAL  
INSTITUTIONS DIVISION  
SUBCHAPTER B. MAXIMUM SYSTEM  
CAPACITY OF THE CORRECTIONAL  
INSTITUTIONS DIVISION**

**37 TAC §152.16**

The Texas Board of Criminal Justice adopts new §152.16, concerning July 2004 Additions to Capacity without changes to the text as proposed in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7659).

The purpose of the rule is to memorialize proposed additions to capacity at the below-listed TDCJ unit, in accordance with the "House Bill 124" process embodied in Texas Government Code §§499.102 et seq., originally enacted at Acts 1991, 72nd Leg., ch. 655: At the LeBlanc Unit, an additional 12 beds (6 double bunks) in each of 18 dorms, for a total of 216 beds.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Government Code, §§499.102 et seq.

Cross Reference to Statutes: Texas Government Code, §§499.102 et seq.

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 September 24,  
2004.

TRD-200405890

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Effective date: October 14, 2004

Proposal publication date: August 6, 2004

For further information, please call: (512) 463-0422



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

---

## Agency Rule Review Plan--Revised

State Pension Review Board

### Title 40, Part 17

Rule Review Plan at <http://www.sos.state.tx.us/texreg/review/2004/index.shtml>

TRD-200405902

Filed: September 27, 2004



## Proposed Rule Reviews

Texas State Library and Archives Commission

### Title 13, Part 1

The Texas State Library and Archives Commission files this notice of intention to review Title 13 TAC, Part 1, Chapter 3, concerning the State Publications Depository Program, in accordance with Government Code §2001.39, which require state agencies to review and consider for readoption each of their rules every four years.

The rules were adopted pursuant to the Government Code, §441.102(a), which requires the Texas State Library and Archives Commission to adopt policies to ensure the distribution of state publications to depository libraries; Government Code §441.103(b), which requires the Texas State Library and Archives Commission to adopt policies to ensure the acquisition of state publications from state agencies and institutions of higher education; Government Code §441.104(7) to §441.104(9), which requires the Texas State Library and Archives Commission to adopt policies to provide indexes of and electronic access to all state publications in electronic format, and Government Code §441.010(b), which establishes an electronically searchable central grant database. The rules are necessary to carry out the statutory obligations of the Texas State Library and Archives Commission for the establishment and maintenance of a state publications depository program.

Written comments on the commission's review of Chapter 3 rules may be directed to Beverley Shirley, Library Resource Sharing Division, Box 12927, Austin, TX. 78711-2927 or by fax (512) 936-2306.

TRD-200405909

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Filed: September 27, 2004



Texas Workforce Commission

### Title 40, Part 20

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 800, General Administration in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to John Moore, General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas, 78778-0001; via facsimile at (512) 463-1426; or via e-mail at [john.moore@twc.state.tx.us](mailto:john.moore@twc.state.tx.us).

For information about the Commission, please visit our web page at [www.texasworkforce.org](http://www.texasworkforce.org).

TRD-200405880

John Moore

General Counsel

Texas Workforce Commission

Filed: September 23, 2004



The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 801, Local Workforce Development Boards in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to John Moore, General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas, 78778-0001; via facsimile at (512) 463-1426; or via e-mail at [john.moore@twc.state.tx.us](mailto:john.moore@twc.state.tx.us).

For information about the Commission, please visit our web page at [www.texasworkforce.org](http://www.texasworkforce.org).

TRD-200405879

John Moore  
General Counsel  
Texas Workforce Commission  
Filed: September 23, 2004

◆ ◆ ◆  
The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 819, Texas Workforce Commission - Civil Rights Division in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to John Moore, General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas, 78778-0001; via facsimile at (512) 463-1426; or via e-mail at john.moore@twc.state.tx.us.

For information about the Commission, please visit our web page at [www.texasworkforce.org](http://www.texasworkforce.org).

TRD-200405878  
John Moore  
General Counsel  
Texas Workforce Commission  
Filed: September 23, 2004

◆ ◆ ◆  
The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 835, Self-Sufficiency Fund in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to John Moore, General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas, 78778-0001; via facsimile at (512) 463-1426; or via e-mail at john.moore@twc.state.tx.us.

For information about the Commission, please visit our web page at [www.texasworkforce.org](http://www.texasworkforce.org).

TRD-200405877  
John Moore  
General Counsel  
Texas Workforce Commission  
Filed: September 23, 2004

◆ ◆ ◆  
**Adopted Rule Review**

Texas State Board of Public Accountancy

**Title 22, Part 22**

In accordance with Government Code §2001.039 the Texas State Board of Public Accountancy (board) adopts the review of Chapters 505 concerning The Board; 507 concerning Employees of the Board; 509 concerning Rulemaking Procedures; 512 concerning Certification by Reciprocity; 513 concerning Registration; 519 concerning Practice and Procedure; 526 concerning Board Opinions; and 527 concerning Peer Review in Title 22 Texas Administrative Code, Part 22. The board published a Notice of Intention to Review Title 22, TAC, Part 22, in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1234). No comments were received regarding adoption of the rule review.

Government Code §2001.039 requires that every agency review each of its rules to determine at a minimum whether the reasons for the adoption of the rule continues to exist. In accordance with the provisions of Government Code §2001.039 the board developed a list of questions and considerations it used to guide its rule review. These considerations included an analysis of whether each rule is needed for fair administration and just enforcement of the Public Accountancy Act and whether the rule reflects current board policy and current legal interpretations of the Act.

As a result of conducting its review of these Chapters, the board has proposed and/or adopted amendments to or repeals of approximately 50 rules. Each of these amendments and repeals have been published in the *Texas Register* in accordance with the Administrative Procedure Act. The board finds that the reasons for adopting those of its rules for which no amendments or repeals have been proposed in the course of its review continue to exist.

This concludes the Board's review of Chapters 505, 507, 509, 512, 513, 519, 526 and 527. The completion of the review of these chapters concludes the entire rule review process.

TRD-200405853  
Rande K. Herrell  
General Counsel  
Texas State Board of Public Accountancy  
Filed: September 22, 2004

# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §523.144(c)

NO. OF COURSE TITLES OFFERED	TOTAL ANNUAL REGISTRATION FEE
1 - 4	\$750
5 - 10	\$1000
11 - 40	\$1500
41 +	\$2500
Exemption 1	0
Exemption 2	0
Exemption 3	0
Exemption 4	0

## MEMORANDUM OF UNDERSTANDING

### **Between the Texas Department of Criminal Justice, the Texas Health and Human Services Commission, Community Mental Health and Mental Retardation Centers, and Community Supervision and Corrections Departments**

For the purpose of establishing a continuity of care system for offenders with mental illness or mental retardation (mental impairments); the Texas Department of Criminal Justice (TDCJ); the Texas Health and Human Services Commission (HHSC); community Mental Health and Mental Retardation centers as the designated Mental Health/Mental Retardation (MHMR) authorities in Texas; and local community supervision and corrections departments (CSCDs) (The Entities) agree to the following:

1. AUTHORITY AND PURPOSE:

a) Texas Health and Safety Code, §614.013 authorizes TDCJ, HHSC, local MHMR authorities, and CSCDs to establish a Memorandum of Understanding (MOU) that identifies methods for:

- identifying offenders with mental impairments in the criminal justice system and collecting and reporting prevalence rate data to the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI);
- developing interagency rules, policies, procedures, and standards for the coordination of care of and the exchange of information on offenders with mental impairments by local and state criminal justice agencies, the Texas Health and Human Services Commission, local mental health or mental retardation authorities, the Commission on Jail Standards, and local jails;
- identifying the services needed by offenders with mental impairments to reenter the community successfully; and
- establishing a process to report implementation activities to TCOOMMI.

2. ALL ENTITIES AGREE TO:

a) Follow the statutory provisions in Chapter 614 of the Health and Safety Code relating to the exchange of information (including electronic) about offenders with mental impairments or mental retardation for the purpose of providing or coordinating services among the Entities; and when appropriate include such requirements in any relevant rules, policies or contract/grants.

b) Develop rules, policies, procedures, regulations or standards that describe the agency's role and responsibility in the continuity of care process for persons with mental impairments and/or mental retardation.

c) Develop procedures that provide for the preparation and sharing of assessments or diagnostics prior to the imposition of community supervision, incarceration, or parole,

and the transfer of such diagnostics between local and state entities described in this agreement.

d) Participate in cross training or educational events targeted for improving each agency's knowledge and understanding of the criminal justice and MHMR systems' roles and responsibilities.

e) Inform each other of any proposed policy, procedure, standard or rule changes which could affect the continuity of care system with each agency afforded thirty (30) days after receipt of proposed change(s) to respond to the recommendations prior to their adoption.

f) Provide written status reports to TCOOMMI on the implementation of initiatives outlined in this MOU on a routine basis, but not less than once a year.

g) Actively seek federal funds to operate or expand the service capability to include local and state criminal justice entities contracting with the public mental health system for the purpose of maximizing Medicaid and other entitlements.

3. TDCJ THROUGH ITS DIVISIONS SHALL:

a) Cross reference offender database to the CARE system and make information available to the CSCDs on a monthly basis.

b) Develop standards for specialized mental health caseloads and provide training/technical assistance to specialized officers on a routine basis.

c) Establish a process for cross-referencing data on CID inmates with the HHSC CARE system on a weekly basis. This process will include an internal mechanism for distributing the information to the appropriate division(s), contract entities or other providers as deemed necessary and allowed by law.

d) Develop a process to ensure that any psychiatric, diagnostic or treatment information pertaining to offenders will be provided to relevant local and state criminal justice, mental health or other contract providers prior to release from custody.

e) Ensure that offenders being released from institutional facilities have access to a ten-day supply of medications upon their release.

f) Establish an internal procedure in cooperation with TCOOMMI to review Motion to Revoke cases (blue warrants) involving any parolee with a mental impairment. This review will address interventions that have been made or should be made prior to final revocation action.

g) Report implementation activities to TCOOMMI on a quarterly basis.

4. HHSC SHALL:

a) Develop, in cooperation with TCOOMMI, continuity of care rules specific to juveniles or adults with mental impairments and/or mental retardation who are involved in the criminal justice system.

b) Notify in accordance to Commissioners Rules, the local mental health authority and TCOOMMI, of a 46.B defendant's release from a state facility to the committing jurisdiction after restoration of competency has been determined.

c) Include in the performance contracts requirements for local MHMR centers to adhere to and implement the activities outlined in the MOU, including statutory provisions specific to sharing of information, and cross-referencing data with local and state correctional, juvenile justice and criminal justice entities.

d) Respond to TDCJ's weekly data requests to cross-reference offender data to the CARE system and provide match information within 7 days.

e) Provide quarterly reports to TCOOMMI on the status of MOU implementation activities.

5. COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENTS ARE RESPONSIBLE FOR THE FOLLOWING ACTIVITIES:

a) Submit to the local MHMR Authorities a list of offenders who are being supervised (i.e., pre-trial, if applicable; deferred adjudication or placed on community supervision) by the department on a schedule mutually agreed upon by the department and the local MHMR authority. The initial list submitted should include all offenders on some form of supervision in order to establish a baseline. All lists thereafter will consist of new and/or deleted cases during the period being reported.

b) Facilitate the coordination of supervision with local MHMR authorities or other treatment providers. This will include:

- joint staffings of mutual offender/clients to review compliance to treatment and supervision;
- input on modifications of conditions;
- coordination with treatment providers on imposing new conditions, sanctions or motion to revoke/adjudicate in order to explore all possible alternatives to incarceration; and
- coordination on the development of a joint supervision and treatment plan if governing standards for the respective participants can be adhered to in the proposed plan.

c) Provide technical assistance and training to local MHMR staff on criminal justice issues specific to community supervision.

d) Participate in quarterly meetings with the MHMR Executive Director(s) and/or his/her designee to review the implementation of MOU activities and to document status.

e) Contract with the local MHMR authorities for mental health/mental retardation assessments or other treatment services in order to minimize duplication of effort and maximize Medicaid or other federal benefits.

6. THE LOCAL MHMR AUTHORITY WILL PERFORM THE FOLLOWING ACTIVITIES:

a) Provide to the CSCD the name of the designated staff member who serves as the contact for all criminal justice referrals and other related issues (i.e., obtaining client information, records or assessments).

b) Facilitate the coordination of supervision with the CSCD personnel that will include:

- joint staffings of mutual offender/clients to review compliance to treatment and supervision;
- input on modifications of conditions;
- coordination with CSCD personnel on imposing new conditions, sanctions and/or motion to revoke/adjudicate in order to explore all possible alternatives to incarceration; and
- coordination on the development of a joint supervision and treatment plan if governing standards for the respective participants can be adhered to in the proposed plan.

c) Establish a process for cross-referencing probation and/or local inmate jail lists with the HHSC CARE system. Progress toward or obstacles to complying with this MOU activity will be reported to TCOOMMI with an explanation of obstacles and recommendations for correction. If a process cannot be established electronically, an alternative should be developed that will establish a referral and reporting system between the center and local CSCDs and jails in their catchment area.

d) Coordinate with the jail on those persons incarcerated who have been returned to the local jail under a Section 46.B, Code of Criminal Procedure commitment, in accordance with TCOOMMI contract requirements with the local MHMR authority.

e) Designate a continuity of care contact person for all 46.B commitments to serve as the primary liaison between local MHMR authorities, jails and TCOOMMI.

f) Participate in quarterly meetings with the CSCD Director or his/her designee to review the implementation of MOU activities and to document status.

g) Offer or provide technical assistance and training to the CSCD and other criminal justice entities (pre-trial, jail, courts) on mental health and related issues.

h) Provide written quarterly reports to TCOOMMI and the MHMR's governing body on the implementation and status of MOU activities as outlined in this section. These reports will satisfy reporting requirements in Section 2 of this MOU.

7. REVIEW AND MONITORING:

a) This MOU shall be adopted by the Texas Health and Human Services Commission, the Texas Department of Criminal Justice, the boards of trustees of community MHMR centers and local CSCDs. Subsequent to adoption, all parties must provide status



reports to TCOOMMI. Amendments to this MOU may be made at any time by mutual agreement of the parties.

b) TCOOMMI will serve as the dispute resolution mechanism for conflicts concerning this MOU at both the local and statewide level.

c) TCOOMMI, in coordination with each state agency identified, shall develop a standardized process for collecting and reporting the MOU implementation outcomes by local and state criminal justice agencies and local and state mental health or mental retardation authorities. The findings of these reports shall be submitted to TCOOMMI by September 1 of each even-numbered year and shall be included in recommendations to the legislature in TCOOMMI's biennium report.

# 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 Bandera County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 Texas Administrative Code (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 **Bandera County, County #010**. Medicaid nursing facility occupancy rates in **Bandera County** exceeded the 90% occupancy threshold for six consecutive months during the period of **March 2004 through August 2004**. The county occupancy rates for each month of that period were: **91.5%, 94.0%, 90.7%, 94.3%, 93.2%, 95.8%**. 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 November 8, 2004, 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-200405939

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Filed: September 29, 2004

## 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. 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. Requests for federal consistency review were deemed administratively complete

for the following project(s) during the period of September 16, 2004, through September 22, 2004. The public comment period for these projects will close at 5:00 p.m. on October 15, 2004.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Lyon Properties;** Location: The project is located in open water and wetlands adjacent to the Gulf Intracoastal Waterway (GIWW) at the northeast corner of the intersection of GIWW and SH 332 (Gaffney Drive north of SH 322) in Surfside, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 276614; Northing: 3205092. The mitigation project can be located on the U.S.G.S. quadrangle map entitled: Jones Creek, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 265719; Northing: 3202465. Project Description: The applicant proposes to place fill into 0.70 acres of wetlands and 0.27 acres of water during the construction of a marina on a 4.05-acre site in Surfside, Texas. The applicant also proposes to excavate 0.72 acres of wetlands and 0.89 acres of uplands and dredge 0.25 acres of adjacent waters during the construction of the marina. The applicant proposes the construction of a boat slip area capable of mooring 76 boats in individual slips within the harbor. The applicant also proposes to construct three mooring piers and a parking area with access to Gaffney Drive. The sheet labeled "Attachment B" in the plans describes the proposed facilities in detail. The placement area (PA) proposed for the placement of approximately 9,437 cubic yards of excess dredge material from the proposed marina excavation would be located on a 3-acre site approximately 4 miles from the proposed marina. The PA is an existing concrete crushing and aggregate operation (Mike Sorrell Trucking and Materials, Inc.) and has been modified to require only 1 acre of placement as the excess material from excavating the marina will be heavy clay material. These soils can be stockpiled in the existing work yard of the concrete crushing operation. No wetlands exist in the proposed PA. Water from the PA will drain to the vacant pasture north of the work yard. Filter fabric fence and hay bale diversions may be used to aid in the diversion. In general, the pasture drains north through a vegetated man-made ditch into East Union Bayou and ultimately into the GIWW. To compensate for impacts the applicant would enhance 7.2 acres and create 8.5 acres of palustrine emergent marsh on the Peach Point Wildlife Management Area. The proposed mitigation would involve the installation of two water control structures in an existing access road, a culvert within an access road to the north, and an earthen plug in an existing pipeline ditch to prevent the project from dewatering. A jurisdictional delineation verification (D-15141) dated November 18, 2003, stated the project area contains 1.00 acre of open water of the GIWW and 1.34 acres of wetlands adjacent to the GIWW. CCC Project No.: 04-0308-F1; Type of Application: U.S.A.C.E. permit application #23484 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Spinnaker Exploration Company, L.L.C.;** Location: The project is located approximately 18 miles southeast of the Texas coastline in the Galveston Anchorage Area, in Galveston Area, N/2 Block 226, offshore Texas, Gulf of Mexico. The location for

the structure using State Plane Coordinates, South Central Texas Zone, NAD 27 (feet) is X=3,403,630.58; Y=481,665.66. Project Description: The applicant proposes to install, operate, and maintain a jack-up rig, typical well-protector and appurtenant structures and equipment necessary to conduct oil and gas exploration and production operations for OCS-G-23171 Well Nos. 1, 2, and 3. No dredging and/or fill will be required for the proposed operations. CCC Project No.: 04-0311-F1; Type of Application: U.S.A.C.E. permit application #23547 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

**Applicant: Palaura Exploration Company;** Location: The project is located in adjacent wetlands to Alligator Slough, located south of FM 2004 in the Brazoria National Wildlife Refuge on Hoskins Mound, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Hoskins Mound, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 283360; Northing: 3225716. Project Description: The applicant proposes to retain 0.39 acres of fill material in waters of the United States. The project involved discharge of fill material in adjacent wetlands to construct a drill pad and access road. A portion of the original drill pad has already been removed and the pad shrunk to the minimum necessary for production purposes. As of this time, 0.535 acres has already been restored when the drill pad was reduced in size from an exploratory pad to a production pad. The 0.39 acres of fill material that remains was part of maintaining two 12-inch diameter drain pipes under a lease road that were cleared of dirt obstructing the pipe entrances. A third pipe was completely replaced as it had collapsed. A fourth pipe was reset to allow proper drainage. CCC Project No.: 04-0312-F1; Type of Application: U.S.A.C.E. permit application #23468 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Meredith Ogden;** Location: The project is located along Offatts Bayou, at the end of 91st Street, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 318288; Northing: 3240306. Project Description: The applicant proposes to construct 6 covered boathouses and to retain an existing boathouse attached to an existing terminal structure. The 6 covered boathouses will total 32 feet in length and 72 feet in width. The existing boathouse to be retained is 25 feet long and 12 feet wide. CCC Project No.: 04-0307-F1; Type of Application: U.S.A.C.E. permit application #17307(03) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

**Applicant: Prida Construction;** Location: The project is located at 9420 Seawall Boulevard, Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 319428; Northing: 3236780. Project Description: The applicant proposes to fill 0.022 acre (976 square feet) of wetlands during the construction of a condominium at 9420 Seawall Boulevard. The footprint of the proposed building extends to the edge of a lake generally called Sea Arama Lake. The wetlands to be filled correspond to a proposed parking area that would be located directly under the building. A retaining wall would be constructed that would extend in a straight line along the north boundary of the proposed building and parking lot. CCC Project No.: 04-0301-F1; Type of Application: U.S.A.C.E. permit application #23538 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Gryphon Exploration Company;** Location: The project is located in the Freeport Anchorage Area, in Galveston Area Block 344, offshore Texas, Gulf of Mexico. The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 286518; Northing: 3181688. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, and production activities. Such activities include installation of typical jackup rig and production structures with attendant facilities. Water depth on the project area is approximately 66 feet. CCC Project No.: 04-0303-F1; Type of Application: U.S.A.C.E. permit application #23525 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

**Applicant: Texas Department of Transportation;** Location: The project is located in East Bay and adjacent wetlands, on the Bolivar peninsula, along SH 87 from the Bolivar Ferry landing to SH 124, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Galveston, Flake, Caplen, Frozen Point, and High Island, Texas. Approximate UTM Coordinates in NAD 27 (meters) west end: Zone 15; Easting: 327683; Northing: 3249490. Approximate UTM Coordinates in NAD 27 (meters) east end: Zone 15; Easting: 365320; Northing: 3269659. Project Description: The applicant proposes to conduct maintenance excavation within 29 outfall channels and several roadside ditches along and perpendicular to SH 87. The project will impact 2.98 acres of wetlands and other waters of the U.S., comprised of 2.54 acres within the 29 outfall channels and an additional 0.44 acres within roadside ditches. Of the 2.98 acres of jurisdictional areas, 2.06 acres are emergent wetlands and the remaining 0.92 acres open water. The wetlands impacted include roadside ditches dominated by facultative wetland species to brackish marsh dominated by sea-oxeye daisy (*Borrichia frutescens*), marshhay cordgrass (*Spartina patens*), salt grass (*Distichlis spicata*) and glasswort (*Salicornia virginica*). The proposed typical cross section of the outfall channels is a 6-foot bottom width channel approximately 2 feet in depth with 3:1 slopes. Work will be accomplished by excavating the channels and ditches from mats when necessary utilizing a backhoe within a 30-foot-wide easement. All excavated material will be hauled to an upland site for placement. The upland placement site has not been identified; however, the applicant will be required to specify placement area(s) and have them approved prior to beginning construction. The applicant has not proposed mitigation for this project and states that they do not believe it is necessary because the project is for maintenance. The project also includes the discharge of 74 cubic yards of fill for the replacement of culverts at Outfall Channel 3. CCC Project No.: 04-0313-F1; Type of Application: U.S.A.C.E. permit application #23382 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. Gwen Spriggs, Council Administrative Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or [gwen.spriggs@glo.state.tx.us](mailto:gwen.spriggs@glo.state.tx.us). Comments should be sent to Ms. Spriggs at the above address or by fax at 512/475-0680.

TRD-200405930

Larry L. Laine  
Chief Clerk/Deputy Land Commissioner, General Land Office  
Coastal Coordination Council  
Filed: September 29, 2004

◆ ◆ ◆  
**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 Sections 303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 10/04/04 - 10/10/04 is 18% for Consumer <sup>1</sup>Agricultural/Commercial <sup>2</sup>credit thru \$250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 10/04/04 - 10/10/04 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by Sec. 303.005 <sup>3</sup>for the period of 10/01/04 - 10/31/04 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The monthly ceiling as prescribed by Sec. 303.005 for the period of 10/01/04 - 10/31/04 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

<sup>3</sup>For variable rate commercial transactions only.

TRD-200405920

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: September 28, 2004

◆ ◆ ◆  
**Texas Commission on Environmental Quality**

**Enforcement Orders**

A default order was entered regarding M & M Dairy, Inc., Docket No. 2002-1333-AGR-E on 09/17/2004 assessing \$15,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Diana Grawitch, Staff Attorney at 512/239-0939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Praxair, Inc., Docket No. 2003-0988-PST-E on 09/17/2004 assessing \$3,030 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at 512/239-2142, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J & J Business, Inc., Docket No. 2003-1043-PST-E on 09/17/2004 assessing \$5,775 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sunday Udoetok, Enforcement Coordinator at 512/239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Devon Gas Services, L.P., Docket No. 2003-1405-AIR-E on 09/17/2004 assessing \$36,750 in administrative penalties with \$7,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Fox, Enforcement Coordinator at 817/588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gardner Glass Products, Inc., Docket No. 2003-1064-AIR-E on 09/17/2004 assessing \$2,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tifco Industries Inc, Docket No. 2003-1578-MWD-E on 09/17/2004 assessing \$4,020 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at 817/588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GEUS, Docket No. 2003-1583-AIR-E on 09/17/2004 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Fox, Enforcement Coordinator at 817/588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mulberry Kaufman Enterprises, Inc. dba Mulberry Kaufman Beer & Wine Grocery, Docket No. 2003-0874-PST-E on 09/17/2004 assessing \$1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at 512/239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Andrews Transport, Inc., Docket No. 2003-1078-PST-E on 09/17/2004 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at 432/620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Beverly Henson dba Circle H Muffler Shop, Docket No. 2003-0581-AIR-E on 09/17/2004 assessing \$5,063 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at 512/239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sabre Communications Corporation dba Sabre Tubular Structures, Docket No. 2003-1447-AIR-E on 09/17/2004 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at 210/403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Farmers Dairies, Ltd., Docket No. 2004-0019-AIR-E on 09/17/2004 assessing \$650 in administrative penalties with \$130 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at 512/239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duke Energy Field Services, L.P., Docket No. 2002-1386-AIR-E on 09/17/2004 assessing \$47,335 in administrative penalties with \$8,992 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at 512/239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of China, Docket No. 2003-0383-MWD-E on 09/17/2004 assessing \$8,085 in administrative penalties with \$1,617 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at 512/239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Russell Wayne Turner, Docket No. 2004-0041-OSI-E on 09/17/2004 assessing \$1,750 in administrative penalties with \$350 deferred.

Information concerning any aspect of this order may be obtained by contacting Christina McLaughlin, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Superior Manufactured Homes, Inc. dba Garden Acres Subdivision, Docket No. 2003-0667-PWS-E on 09/17/2004 assessing \$788 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at 713/422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matthews Backhoe, Inc., Docket No. 2003-1477-MSW-E on 09/17/2004 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at 512/239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2002-0722-AIR-E on 09/17/2004 assessing \$150,462 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at 512/239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kwang Soon Lee dba Kim One Stop Shop, Docket No. 2003-0977-PST-E on 09/17/2004 assessing \$800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Clyde, Docket No. 2003-1498-PWS-E on 09/17/2004 assessing \$3,903 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at 512/239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Salemohmed Sajjad Ali dba Austin Food Store, Docket No. 2003-0990-PST-E on 09/17/2004 assessing \$1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at 512/239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Methodist Children's Home dba Methodist Home Boys Ranch, Docket No. 2003-0439-MWD-E on 09/17/2004 assessing \$7,200 in administrative penalties with \$1,440 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Corpus Christi, Docket No. 2003-1347-MWD-E on 09/17/2004 assessing \$66,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cari Bing, Enforcement Coordinator at 512/239-1445, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brownfield Independent School District, Docket No. 2003-1526-MSW-E on 09/17/2004 assessing \$650 in administrative penalties with \$130 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at 512/239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bell County Water Control & Improvement District No. 1, Docket No. 2003-1354-MLM-E on 09/17/2004 assessing \$17,510 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at 512/239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crockett Farm & Fuel Center, Inc., Docket No. 2003-0807-PST-E on 09/17/2004 assessing \$2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Weatherford Aerospace, Inc., Docket No. 2004-0100-AIR-E on 09/17/2004 assessing \$8,245 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at 817/588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical, L.P., Docket No. 2004-0101-AIR-E on 09/17/2004 assessing \$2,400 in administrative penalties with \$480 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alexander Oil Company, Docket No. 2004-0102-PST-E on 09/17/2004 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Miller, Enforcement Coordinator at 325/698-6136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DTG Operations, Inc. dba Dollar Rent A Car, Docket No. 2004-0107-PST-E on 09/17/2004 assessing \$10,200 in administrative penalties with \$2,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at 512/239-2142, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Osteopathic Medical Center of Texas, Docket No. 2004-0155-PST-E on 09/17/2004 assessing \$1,600 in administrative penalties with \$320 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at 512/239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Peregrine Homeowners Association, Inc., Docket No. 2004-0159-PWS-E on 09/17/2004 assessing \$1,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at 956/430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Newton Water Supply Corporation, Docket No. 2004-0165-PWS-E on 09/17/2004 assessing \$530 in administrative penalties with \$106 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at 512/239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sitton Oil and Marine Company, Inc., Docket No. 2004-0169-PST-E on 09/17/2004 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Sunday Udoetok, Enforcement Coordinator at 512/239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Buena Vista-Bethel SUD, Docket No. 2004-0187-PWS-E on 09/17/2004 assessing \$255 in administrative penalties with \$51 deferred.

Information concerning any aspect of this order may be obtained by contacting Leila Pezeshki, Enforcement Coordinator at 210/403-4080, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding King Fuels, Inc., Docket No. 2004-0192-PST-E on 09/17/2004 assessing \$1,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Great Plains Cattle Feeders, Inc., Docket No. 2004-0240-AGR-E on 09/17/2004 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at 806/468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Edcouch-Elsa Independent School District Public Facility Corporation, Docket No. 2004-0249-PST-E on 09/17/2004 assessing \$14,400 in administrative penalties with \$2,880 deferred.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at 512/239-2142, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 7-Eleven, Inc., Docket No. 2004-0274-PST-E on 09/17/2004 assessing \$495 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Erika Fair, Enforcement Coordinator at 512/239-6673, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S. D. Harrison dba San Pedro Village, Docket No. 2004-0313-PWS-E on 09/17/2004 assessing \$105 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at 512/239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hog Creek WSC, Docket No. 2004-0318-PWS-E on 09/17/2004 assessing \$945 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Miller, Enforcement Coordinator at 325/698-6136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matrix Metals, LLC dba Richmond Foundry Co., Docket No. 2004-0385-AIR-E on 09/17/2004 assessing \$2,350 in administrative penalties with \$470 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at 713/767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200405938

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 29, 2004



## Notice of District Petition

Notices mailed September 22, 2004

TCEQ Internal Control No. 03012004-D04; SAN ANTONIO RIVER AUTHORITY of Bexar, Goliad, Karnes and Wilson Counties (the Authority) has filed an application with the Texas Commission on Environmental Quality (TCEQ) for authority to levy impact fees of \$1,350 per equivalent single family connection for new connections to the wastewater system within or near the service area of Salatrillo Creek Wastewater System. The Authority files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TCEQ. The purpose of impact fees is to generate revenue to recover the costs of capital improvements and facility expansions made necessary by and attributable to serving new development in the Authority's service area. At the direction of the Authority, a registered engineer has prepared a capital improvements plan for the system which identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The impact fee application and supporting information are available for inspection and copying during regular business hours in the Utilities and Districts Section of the Water Supply Division, Third Floor of Building F (in the TCEQ Park 35 Office Complex located between Yager & Braker Lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. A copy of the impact fee application and supporting information, as well as the capital improvements plan, is available for inspection and copying at the San Antonio River Authority's office during regular business hours.

TCEQ Internal Control No. 03012004-D01; SAN ANTONIO RIVER AUTHORITY of Bexar, Goliad, Karnes and Wilson Counties (the Authority) has filed an application with the Texas Commission on Environmental Quality (TCEQ) for authority to levy impact fees of \$2,150 per equivalent single family connection for new connections to the wastewater system within or near the service area of Martinez Creek Wastewater System. The Authority files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TCEQ. The purpose of impact fees is to generate revenue to recover the costs of capital improvements and facility expansions made necessary by and attributable to serving new development in the Authority's service area. At the direction of the Authority, a registered engineer has prepared a capital improvements plan for the system which identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The impact fee application and supporting information are available for inspection and copying during regular business hours in the Utilities and Districts Section of the Water Supply Division, Third Floor of Building F (in the TCEQ Park 35 Office Complex located between Yager & Braker Lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. A copy of the impact fee application and supporting information, as well as the capital improvements plan, is available for inspection and copying at the San Antonio River Authority's office during regular business hours.

### INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy

your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200405936

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 29, 2004

### ◆ ◆ ◆ Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 8, 2004**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 8, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Jose Garza, Sr. dba Rancho Potrero Used Auto Parts;  
DOCKET NUMBER: 2003-1269-WQ-E; TCEQ ID NUMBERS:

R15SW0009 and RN103033015; LOCATION: approximately 0.5 miles south of the intersection of Farm-to-Market road 1732 and United States Highway 281, Brownsville, Cameron County, Texas; TYPE OF FACILITY: automobile salvage yard; RULES VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations (CFR) §122.26(a)(ii), and Multi-Sector Industrial General Permit Number TXR050000, by failing to obtain authorization to discharge storm water associated with industrial activity to the waters in the state through an individual permit; PENALTY: \$11,000; STAFF ATTORNEY: Sarah Utley, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: M & C Enterprises Inc.; DOCKET NUMBER: 2003-0809-PST-E; TCEQ ID NUMBER: 54921; LOCATION: 1607 South Houston Avenue, Humble, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), and TWC, §26.352, by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the underground storage tanks (USTs); and 30 TAC §334.22(a), by failing to remit all UST fees to the commission in a timely manner; PENALTY: \$4,200; STAFF ATTORNEY: Ashley Keever, Litigation Division, MC 175, (512) 239-2987; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Padma Corporation dba Step N Go; DOCKET NUMBER: 2003-0893-PST-E; TCEQ ID NUMBERS: 39391 and RN102469681; LOCATION: 8188 Spring Valley Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate continuous financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the USTs; PENALTY: \$3,210; STAFF ATTORNEY: Christina Mann, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Sam Song dba Sam Song Motors; DOCKET NUMBER: 2003-0373-AIR-E; TCEQ ID NUMBERS: DB-3704-G and RN102699790; LOCATION: 11128 Harry Hines Boulevard, Dallas, Dallas County, Texas; TYPE OF FACILITY: vehicle inspection station; RULES VIOLATED: 30 TAC §114.50(d)(1) and Texas Health and Safety Code, §382.085(b), by failing to properly perform the annual vehicle inspection and vehicle emission inspection and maintenance requirements and procedures prior to the issuance of an inspection certification; PENALTY: \$575; STAFF ATTORNEY: Christina Mann, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Tayyab M. Sheikh dba Sandy Center; DOCKET NUMBER: 2003-0901-PST-E; TCEQ ID NUMBERS: 28031 and RN101382166; LOCATION: 105 East Broadway, Big Sandy, Upshur County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate continuous financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the USTs; PENALTY: \$2,400; STAFF ATTORNEY: Christina Mann, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-200405917

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 28, 2004

◆ ◆ ◆  
Notice of Opportunity to Comment on Settlement Agreements  
of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 8, 2004**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 8, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: A&M Interests, Inc. dba North Side Texaco; DOCKET NUMBER: 2003-0834-PST-E; TCEQ ID NUMBERS: 62151 and RN101433100; LOCATION: 1519 North Frazier Street, Conroe, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks (USTs); PENALTY: \$2,400; STAFF ATTORNEY: Sarah Utley, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Adam Keller dba Adam's Irrigation Co. dba Adams Landscape; DOCKET NUMBER: 2003-0534-LII-E; TCEQ ID NUMBER: RN103142311; LOCATION: 7302 Mesquite Creek, San Antonio, Bexar County, Texas; TYPE OF FACILITY: landscape irrigation repair; RULES VIOLATED: 30 TAC §334.4(a) and (b) and TWC, §34.007(a), by altering and repairing a landscape irrigation system without obtaining the required license or being licensed by the State Board of Plumbing Examiners; 30 TAC §334.94(b), by failing to comply with the requirements that all written contracts and bills to



install irrigation systems include the statement "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087"; and 30 TAC §344.93(c), by failing to comply with the requirement prohibiting misleading or deceptive practices related to the bidding or advertising of services; PENALTY: \$375; STAFF ATTORNEY: Barbara Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Binh Tran dba Mini Mart #102; DOCKET NUMBER: 2003-1119-PST-E; TCEQ ID NUMBERS: 0039040 and RN102714474; LOCATION: 2311 25th Avenue North, Texas City, Galveston County, Texas; TYPE OF FACILITY: gasoline retail station; RULES VIOLATED: 30 TAC §115.246(5) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II test records; PENALTY: \$2,240; STAFF ATTORNEY: Sarah Utley, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Brazosport Equipment & Rental, Inc.; DOCKET NUMBER: 1999-1482-MSW-E; TCEQ ID NUMBERS: 455120017 and RN103045860; LOCATION: approximately 0.9 miles southeast of the intersection of Farm-to-Market Road (FM) 523 and State Highway 332, Oyster Creek, Brazoria County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste site; RULES VIOLATED: 30 TAC §330.5(c), by failing to obtain authorization for disposing of municipal solid waste; PENALTY: \$5,500; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Kayan Foods, Inc. dba Delta Food Store; DOCKET NUMBER: 2003-0914-PST-E; TCEQ ID NUMBER: 39747; LOCATION: 9803 South Kirkwood Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$2,460; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Lajuna, Inc.; F.A.H.U. Inc.; and Hugo Estrada; DOCKET NUMBER: 2001-0713-PST-E; TCEQ ID NUMBER: 65084; LOCATION: 3013 5th Street, Stafford, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(9) and THSC, §382.085(b), by failing to conspicuously post operating instructions on the front of each dispenser located at the station that is equipped with a Stage II vapor recovery system; 30 TAC §115.246(4) and THSC, §382.085(b), by failing to maintain and provide documentation at the station showing attendance and completion of Stage II training for each trained employee or representative; 30 TAC §115.244(1) and THSC, §382.085(b), by failing to conduct daily inspections of the Stage II vapor recovery system; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II vapor recovery system; 30 TAC §115.246(3) and THSC, §382.085(b), by failing to maintain a record of all maintenance performed on the Stage II vapor recovery system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct annual pressure decay testing on the Stage II vapor recovery system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a

frequency of at least once every month; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to conduct monthly monitoring of the UST piping system; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test and inspect the line leak detectors connected to the UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate the required financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of USTs; and 30 TAC §334.7(d)(3), by failing to amend, update, or change the UST registration information in order to reflect current release detection information within 30 days of the date on which the owner and/or operator became aware of the change or addition; PENALTY: \$600; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Owens Corning; DOCKET NUMBER: 2004-0074-AIR-E; TCEQ ID NUMBERS: ED-0051-O and RN100223585; LOCATION: 3700 North Interstate Highway 35 East, Waxahachie, Ellis County, Texas; TYPE OF FACILITY: fiberglass manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(G), TCEQ Permit Number 6093, Special Condition 1, Maximum Allowable Emission Rates Table (MAERT), and THSC, §382.085(b), by exceeding the MAERT for ammonia and volatile organic compounds; PENALTY: \$6,000; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Prince Texas Group, Inc.; DOCKET NUMBER: 2002-0698-PST-E; TCEQ ID NUMBERS: 0040084, 0040079, 0040085, 0040077, 0040089, and 0040090; LOCATIONS: 1125 Jefferson Drive, Port Arthur, and 1165 South 11th Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2)(B) and THSC, §382.085(b), by failing to conduct a full system test within 30 days after the original system was replaced; 30 TAC §115.242(3)(M) and THSC, §382.085(b), by failing to maintain the Stage II system free of any equipment defect that would substantially impair the effectiveness of the system in reducing refueling vapors; 30 TAC §115.246(1) and THSC, §382.085(b), by failing to have a copy of the applicable California Air Resources Board Executive Order for the vapor recovery system; 30 TAC §334.22(a), by failing to pay outstanding UST fees and late fees; 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain records of daily inspections of the Stage II system; 30 TAC §115.248(1) and 115.246(4), and THSC, §382.085(b), by failing to make each employee aware of the purpose and correct operation of the vapor recovery equipment and failing to maintain a copy of the Stage II system facility representative certification document at the facility; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to make the Stage II system records available immediately upon request by TCEQ representatives; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each UST with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.48(c), by failing to provide documentation that inventory control for all USTs involved in the retail sale of petroleum substances used as a motor fuel is being conducted; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to monitor piping for releases each month; 30

TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test line leak detectors for proper operation; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(C)(1), by failing to monitor the UST system for releases once per month; 30 TAC §334.8(c)(5)(C), by failing to ensure that the designated UST identification number as listed on the UST registration and self-certification form is legibly and permanently affixed in the immediate area of the appropriate fill tube; 30 TAC §334.10(b), by failing to provide requested facility records in a timely manner; and 30 TAC §334.45(c)(3)(A), by failing to install and maintain a secure anchor at the base of each UL-listed emergency shutoff valve in a piping system in which regulated substances are conveyed under pressure to an aboveground dispensing unit; PENALTY: \$4,200; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Saint-Gobain Abrasives, Inc.; DOCKET NUMBER: 2003-0654-AIR-E; TCEQ ID NUMBERS: EF-0012-C and RN100211655; LOCATION: 2770 Washington Street, Stephenville, Erath County, Texas; TYPE OF FACILITY: coated abrasive manufacturing plant; RULES VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit an annual compliance certification within 30 days after the end of the certification period; and 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to submit a semi-annual deviation report within 30 days after the end of the deviation reporting period; PENALTY: \$2,500; STAFF ATTORNEY: Wendy Cooper, Litigation Division, MC R-4, (817) 588-5867; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Ricky's Enterprises, Inc., dba Tony's Express Mart; DOCKET NUMBER: 2002-0830-PST-E; TCEQ ID NUMBER: 0040209; LOCATION: 4010 Synott, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to submit a UST registration and self-certification form to the TCEQ; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available a valid, current TCEQ delivery certificate before delivery of a regulated substance into the UST system; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures at a retail facility regardless of which method of release detection is used; and 30 TAC §334.50(b)(1)(A), (2), (2)(A)(i), and (A)(i)(III) and TWC, §26.3475(c)(1) and (a), by failing to monitor the USTs for releases at a frequency of at least once per month, failing to equip the regular unleaded and super unleaded pressurized piping with automatic leak detectors, failing to test the diesel fuel line leak detectors at least once per year for performance and operational reliability, and failing to monitor the piping for releases; PENALTY: \$1,500; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Texas Lime Company; DOCKET NUMBER: 2003-0145-AIR-E; TCEQ ID NUMBER: JH-0045-I; LOCATION: 15865 FM 1434, Cleburne, Johnson County, Texas; TYPE OF FACILITY: lime manufacturing; RULES VIOLATED: 30 TAC §101.221(a) and §116.115(b) and (c), THSC, §382.085(b), and Air Permit Number 20519, General Conditions Number 8, by failing to maintain all pollution capture and abatement equipment in good working order

and properly operate the equipment during normal facility operations; 30 TAC §111.155 and THSC, §382.085(b), by failing to meet the particulate matter specifications from a source or sources operated on the property or from multiple sources operated on contiguous properties; 30 TAC §101.4 and THSC, §382.085(b), by failing to prevent the discharge of air contaminants which interfered with the normal use and enjoyment of vegetation and property or may adversely affect human health or welfare, animal life, vegetation, or property; 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the outdoor burning rules of Texas which state that no person may cause, suffer, allow, or permit any outdoor burning within the state except as provided; 30 TAC §101.201(b) and THSC, §382.085(b), by failing to create a final record of all reportable and non-reportable emissions events as soon as practicable but no later than two weeks after the end of an emissions event; 30 TAC §101.201(b) and THSC, §382.085(b), by failing to control fugitive dust emission by spraying, with water and/or appropriate chemicals, the coal, the petroleum coke stockpiles, and the plant road; 30 TAC §116.110(a) and THSC, §382.085(b), by failing to have all materials handling and transfer points of the lime handling and storage system enclosed or vented to the baghouse; and 30 TAC §116.115(c) and §111.111(a) and Air Permit Number 20519, Special Conditions Numbers 6, 7, and 8, by failing to maintain opacity within permitted limits; PENALTY: \$ 50,625; STAFF ATTORNEY: Lisa Lemaczyk, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Thang Corporation dba Quick N Save; DOCKET NUMBER: 2002-1313-PST-E; TCEQ ID NUMBER: 69539; LOCATION: 2013 East Pipeline Road, Bedford, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to submit a fully and accurately completed UST registration and self-certification form in a timely manner; 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c), by failing to ensure that all USTs are monitored for releases at a frequency of at least once every month; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by accepting a delivery of a regulated substance that was deposited into the USTs without having a valid TCEQ delivery certificate; PENALTY: \$6,750; STAFF ATTORNEY: Wendy Cooper, Litigation Division, MC R-4, (817) 588-5867; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Tubular Rental, Inc.; DOCKET NUMBER: 1999-1137-IHW-E; TCEQ ID NUMBER: RN103019337; LOCATION: 112 County Road 132, just north of the intersection of State Highway 44 and FM 2570, Jim Wells County, Texas; TYPE OF FACILITY: oil field service operation; RULES VIOLATED: 30 TAC §330.5 and TWC, §26.121(a), by causing, suffering, allowing, and/or permitting the storage, transportation, and disposal of municipal solid wastes on the east and west rights-of-way of FM 1554 so as to cause the discharge or imminent threat of discharge of municipal solid wastes into, or adjacent to, waters in the state without specific authorization from the commission; 30 TAC §330.5 and §335.4, by causing, suffering, allowing, and permitting the collection, handling, storage, processing, and/or disposal of municipal solid and hazardous wastes at the facility so as to cause the discharge or imminent threat of discharge of municipal solid and/or hazardous wastes into, or adjacent to, the waters in the state; and 30 TAC §335.62, by failing to perform hazardous waste determinations on wastes stored at the facility; PENALTY: \$600; STAFF ATTORNEY: Rebecca Nash Petty, Litigation Division, MC 175, (512) 239-3693;

REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(14) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2000-1100-AIR-E; TCEQ ID NUMBER: NE-0112-G; LOCATION: 5900 Up River Road, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §116.115(c) and §101.20(3), TCEQ Air Permit Number 38754/PSD-TX-324M9, and THSC, §382.085(b), by failing to establish the actual pattern and quantities of air contaminants being emitted from all heaters and boilers within 180 days as required by permit; 30 TAC §101.6(a)(1) and THSC, §382.085(b), by failing to notify the TCEQ of an upset within 24 hours after the discovery; 30 TAC §116.115(b) and §101.20(3), and TCEQ Air Permit Number 38754/PSD-TX-324M9, by allowing unauthorized emissions when operational upsets occurred; 30 TAC §101.6(b) and THSC, §382.085(b), by failing to maintain complete records for upsets; THSC, §382.085(a), by failing to obtain regulatory authority or meet the demonstration requirements for emissions from 13 upsets; 30 TAC §116.715(c)(7) and §101.20(3), TCEQ Air Permit Number 38754/PSD-TX-324M9, and THSC, §382.085(b), by exceeding the emission caps for the main flare and ground flare; 30 TAC §116.715(a) and §101.20(3) and TCEQ Air Permit Number 38754/PSD-TX-324M9, Special Condition Number 11, by failing to route emissions from tank truck loading of gasoline to the vapor combustor; and THSC, §370.008, by failing to pay toxic chemical releases fees; PENALTY: \$75,000; STAFF ATTORNEY: Wendy Cooper, Litigation Division, MC R-4, (817) 588-5867; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200405918

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 28, 2004



#### Notice of Opportunity to Comment on the Draft 2004 Texas Emissions Reduction Plan Biennial Report to the Texas Legislature

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for public comment on the draft 2004 Texas Emissions Reduction Plan (TERP) Biennial Report to the Texas Legislature. The report is due December 1, 2004, in accordance with Texas Health and Safety Code, §§386.057, 386.116(d), and 387.010. Section 386.057(e) specifically requires that the commission request public comment and hold a public meeting prior to submittal of the final report to the legislature. All comments will be considered in the final report.

The TERP was established by the legislature in 2001 to help improve and maintain good air quality throughout the state. The TERP includes grant programs that give incentives to improve air quality in the nonattainment and near nonattainment areas, the development of emission-reducing technologies, and the implementation of energy efficiency programs. The report will provide an overview and status of each program.

A copy of the draft report is available on the TCEQ's Web site at [www.terpgrants.org](http://www.terpgrants.org). Comments should be mailed to Theresa Pella, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, MC 206, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-6166; or emailed to [tpella@tceq.state.tx.us](mailto:tpella@tceq.state.tx.us). Oral comments will be accepted at the public

meeting held in Austin on October 12, 2004, at 1:30 p.m., in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. Questions may be directed to Ms. Pella at (512) 239-6985. Comments must be received by 5:00 p.m., October 15, 2004.

TRD-200405921

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 28, 2004



#### Notice of Water Rights Application

Notices mailed September 10 through September 15, 2004.

APPLICATION NO. 5839; Plum Creek Homeowner's Association, Inc., 12335 Hymeadow Drive, Suite 300, Austin, Texas, 78750, applicant, seeks a permit pursuant to Texas Water Code (TWC) §11.121, and Texas Commission on Environmental Quality Rules 30 TAC §§295.1, et seq. The applicant seeks authorization to maintain an existing Soil Conservation Service (SCS) dam and reservoir for in-place recreational purposes on Plum Creek, tributary of the San Marcos River, tributary of the Guadalupe River, Guadalupe River Basin. The reservoir has a capacity of 180 acre-feet of water and a surface area of 39.34 acres approximately 10.1 miles north from San Marcos and 2.2 miles north from Kyle, Texas, Hays County. The dam is located in the Henry Loller Survey 19, Abstract 290; Station 22+40 on the centerline of the dam is N 23.5217 W, 1,713.30 feet from the northeast corner of the Loller Survey, also being at Latitude 30.0194 N, Longitude 97.8790 W. Plum Creek Conservation District is the local sponsor for the SCS dam and has provided a letter of consent of this application dated May 4, 2004. Plum Creek Development Partners, Ltd., Mountain City Golf Co., L.L.C., and Plum Creek Homeowner's Association, Inc. own the land inundated by the reservoir. Ownership is evidenced by an Amended and Ratified Easement Agreement dated August 17, 2004. The application was received on April 15, 2004. Additional information was received on April 23, May 6, May 10, 2004, July 28, July 30, and August 18, 2004. The Executive Director reviewed the application and determined it to be administratively complete on May 12, 2004. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5838; The Lower Colorado River Authority (LCRA), P.O. Box 220, Austin, TX, 78767-0220, applicant, seeks amendments to its Water Management Plan pursuant to Texas Water Code §11.122 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code §§295.1, et seq. The Water Management Plan for the Lower Colorado River Basin (WMP) defines LCRA's water management programs and policies in accordance with the Final Order of Adjudication of the water rights for the Lower Colorado River Authority, the Enabling Act of the Lower Colorado River Authority, General Law of the State of Texas, particularly the Texas Water Code, LCRA's Certificates of Adjudication Nos. 14-5478 and 14-5482, and the water policies of the Lower Colorado River Authority's Board of Directors. Revisions to the WMP were last approved by the Commission in 1999. The applicant has requested numerous editorial and organizational changes to the existing WMP designed to correct errors, improve the readability, and achieve internal consistency of the document. The major substantive proposed amendment to the existing WMP fall within four areas: (A) Curtailment policy for interruptible stored water supplies. The existing WMP projected the ten-year future firm demands (through 2005) at

about 230,000 acre-feet annually. Based on the Senate Bill 1 analyses, the new ten-year projected firm demands (through 2010) are about 285,000 acre-feet per year - an increase of 55,000 acre-feet per year. The primary reason for this increase is additional water needs to meet population and economic growth in the Austin area, including domestic water use around the Highland Lakes. With this large projected increase in firm water demand, and because firm water demands take priority over all other uses, proposed amendments to the existing WMP have been requested to give a compensating reduction in the interruptible supplies. This reduction will be achieved by revising the annual interruptible water supply curtailment policy, as discussed in detail in Chapter 4 of the existing WMP. The curtailment policy with requested amendments follows: 1. Open Supply - If the total January 1 storage in Lakes Travis and Buchanan combined is greater than 1,400,000 acre-feet, then LCRA will supply all interruptible stored water demands. 2. Curtailment will begin if the total January 1 storage is less than 1,400,000 acre-feet and greater than 325,000 acre-feet. The reduction in interruptible stored water supply when combined storage on January 1 is less than 1,400,000 acre-feet, is shown in Figure 4-1. When the combined storage in Lakes Buchanan and Travis on January 1 is less than 1,150,000 acre-feet, the interruptible stored water supply will be curtailed at a steeper rate. 3. Cutoff of the interruptible stored water supply for the coming year will occur when the combined storage in Lakes Buchanan and Travis on January 1 is less than or equal to 325,000 acre-feet. 4. Reserve Storage Pool - If at any time during the year the total storage in Lakes Buchanan and Travis, combined, is less than or equal to 200,000 acre-feet then all use of interruptible stored water will be stopped. 5. During periods of curtailment or cutoff instituted on January 1, LCRA will cancel the curtailment of interruptible stored water for the irrigation districts at any time during the year prior to July 31, if the combined storage in Lakes Buchanan and Travis is projected to be equal to or greater than 1.4 million acre-feet anytime in July. Further, the remaining available interruptible stored water supplies for the year may be reallocated, at this time, between irrigation operations if such allocations do not adversely affect any irrigation operation. 6. During periods of curtailments, LCRA will allow each irrigation operation the option of either: (1) using up to a maximum authorized volume of interruptible stored water allocated to that operation, or (2) using sufficient water to cultivate a level of acreage agreed upon among the customers within each particular district and LCRA. (B) Allocation of stored water for environmental protection. LCRA's proposed amendments to the existing WMP provide that an intermediate release schedule be provided for estuarine freshwater inflows that allows a slightly more gradual reduction of inflows to Matagorda Bay during low flow years. The proposed amendments are deemed by LCRA as a balance between a modest incremental decrease in irrigation water supplies during drought conditions and modest increased inflow to Matagorda Bay during non-drought years to help maintain the ecological health of the Bay. Based on a balance of environmental and irrigation impacts, the recommended amendments to the existing WMP include an increase of stored water released for estuarine freshwater inflow. This increase would be provided in years when the January 1 storage level in Lakes Buchanan and Travis is between 1.1 to 1.7 million acre-feet (55 and 86 percent full). During the critical drought, LCRA proposes that the total stored water provided for environmental protection remain essentially the same as provided under the existing WMP. However, LCRA's proposed amendments provide that more of this commitment be met with firm, rather than interruptible stored water. The firm stored water so designated would increase from 16,950 acre-feet to 33,440 acre-feet. This additional firm commitment would be provided from available, but uncommitted supplies from Lakes Buchanan and Travis of about 50,000 acre-feet. (C) Incorporation of LCRA's Drought Contingency Plan into the Water Management Plan. The

LCRA Drought Contingency Plan (DCP), as required by TCEQ rules (30 Tex. Admin. Code §§288.20 et seq.), was last approved by the LCRA Board of Directors and submitted to the TCEQ in April 2000. Most of the DCP was taken verbatim from Chapter 4 of the existing WMP. Under current TCEQ rules, the DCP must be updated every five years. For the sake of convenience and to reduce confusion among its customers and other stakeholders, LCRA is requesting that the DCP be formally incorporated into this version of the WMP so that revisions can be made simultaneously in one document. (D) Update of Appendices. The existing WMP contains two appendices; Volume I, which includes relevant LCRA Board policies, and Volume II, which contains technical information on the existing WMP. Changes to Volume I will reflect revisions made to the LCRA Board policies since 1999. Changes to Volume II will reflect changes in agreements between LCRA and the Colorado River Municipal Water District, to delete obsolete appendices, and to update LCRA's standard form contracts and administrative rules for raw water contracts. A copy of the revised WMP along with a redline version of the existing WMP showing the proposed amendments is available for public viewing at the Texas Commission on Environmental Quality Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas, 78753. Additionally, copies of the revised WMP, along with a redline version of the existing WMP, are available for public viewing at the offices of the County Clerk in the following counties: San Saba, Llano, Lampasas, Burnet, Blanco, Williamson, Bastrop, Fayette, Colorado, Wharton, and Matagorda. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on May 16, 2003, and fees were received on April 30, 2004. The application was accepted for filing and declared administratively complete on May 7, 2004. A public comment meeting is intended for the taking of public comment and is not a contested case hearing. A public comment meeting will be held at the following date, time, and place: Monday, November 8, 2004 at 7:00 p.m.; Texas Commission on Environmental Quality; 12100 Park 35 Circle; Building E, Room 201S; Austin, Texas, 78753. The public comment meeting will be held under the authority of Chapters 5 and 11, Texas Water Code, and the rules of TCEQ. TCEQ staff will also receive written comments on the proposed amendments for 30 days from the date of newspaper publication of this notice. Written comments may be mailed to the Office of the Chief Clerk at the address provided in the information section below.

APPLICATION NO. 18-3860A; W.L. Lipscomb and Alvis Lipscomb c/o Gloria Lipscomb Roach, Independent Executrix and Trustee, 11435 Sagewillow, Houston, Texas, 77089, and the City of Victoria, P.O. Box 1758, Victoria, Texas, 77902-1758, seek an amendment to Certificate of Adjudication No. 18-3860 pursuant to Texas Water Code §11.122, §11.085 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §§295.1, et seq. Certificate of Adjudication No. 18-3860 authorizes the owners, W.L. Lipscomb and Alvis Lipscomb, to maintain an off-channel reservoir and impound therein not to exceed 155 acre-feet of water. Owners are also authorized to divert and use from the Guadalupe River, Guadalupe River Basin not to exceed 250 acre-feet of water per annum for agricultural purposes to irrigate a maximum of 154 acres of land out of a 180.79 acre tract in Victoria County and 10 acre-feet of water per annum for domestic purposes at a maximum diversion rate of 8.91 cfs (4,000 gpm) with a priority date of August 15, 1951. A special condition states that all surplus water shall be returned to Blue Bayou, a tributary of the Guadalupe River. The applicants seek an amendment to Certificate of Adjudication No. 18-3860 to change the purpose of the 260 acre-feet of water (250 + 10) to municipal use, change the place of use to Victoria County (being part of the Guadalupe River Basin and the Lavaca-Guadalupe Coastal Basin, thereby requesting an interbasin transfer), change the diversion

point to that point currently authorized by Permit No. 5466A (being upstream of the diversion point currently authorized by Certificate of Adjudication No. 18-3860), and authorize the storage location currently authorized by Permit No. 5466. Applicants also seek to delete the right to store water in the off-channel reservoir currently authorized by Certificate of Adjudication No. 18-3860. The diversion point authorized by Permit No. 5466A is at 28.8053 N Latitude and 97.0338 W Longitude. The storage authorized by Permit No. 5466A is an off-channel reservoir complex which impounds a maximum of 1,000 acre-feet of water and is approximately 1.8 miles west of the Victoria County Courthouse in the Four League Grant to the Corporation of the Town of Victoria Survey, Abstract 341 and the northeast corner of the reservoir complex is S57 W, 1,280 feet from the diversion point. The applicants do not request to change the diversion rate, amount, or capacity of the off-channel reservoir complex. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. Pursuant to a WATER RIGHTS/SPECIAL WARRANTY CONVEYANCE dated July 31, 2004 the City of Victoria will be named as the sole owner of Certificate of Adjudication 18-3860 if this application is granted. The application was received on March 15, 2004. Additional fees and information were received on June 14 and August 12, 2004. The application was accepted for filing and declared administratively complete on June 28, 2004. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below by October 6, 2004.

#### Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

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](http://www.tceq.state.tx.us).

TRD-200405851

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 22, 2004

## Notice of Water Rights Application

Notices mailed September 17 through September 23, 2004.

APPLICATION NO. 12-4106C; The City of Cleburne, City or applicant, P.O. Box 657, Cleburne, Texas 76033 seeks an amendment to Certificate of Adjudication No. 12-4106 pursuant to Texas Water Code (TWC) 11.122 & 11.042 and Texas Commission on Environmental Quality (TCEQ) Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Certificate of Adjudication No. 12-4106 authorizes the City of Cleburne to maintain a dam and reservoir, (known as Lake Pat Cleburne) on the Nolan River, tributary of the Brazos River and to impound 25,600 acre-feet of water. The City is also authorized to divert and use not to exceed 240 acre-feet of water from Lake Pat Cleburne for agricultural purposes to irrigate 80 acres of land in Johnson County with a time priority of March 29, 1976 and 5,760 acre-feet of water per year from Lake Pat Cleburne for municipal and industrial purposes with a time priority of August 6, 1962. The City is further authorized to use the bed and banks of Lake Pat Cleburne to deliver 5,300 acre-feet of water (Lake Aquilla contract water) and 4,700 acre-feet of water (Lake Whitney contract water) per year pursuant to a contract between the City and the Brazos River Authority, and to divert and use said water for municipal purposes from the diversion point authorized by the Certificate. The maximum combined diversion rate for all water is 55.2 cfs (24,774 gpm). Special conditions apply. Applicant seeks to amend Certificate of Adjudication No. 12-4106 to: (a) Divert and reuse existing and future City return flows for agricultural, industrial, and municipal purposes within the City's service area in Johnson County, (b) Use the bed and banks of West Buffalo Creek, Buffalo Creek, and the Nolan River to transport the discharged water to the diversion point(s) downstream of the outfalls/discharge points on the Nolan River or its tributaries, and (c) Divert up to a maximum combined total from the two outfalls/discharge points of 7.5 mgd (8,400 acre-feet of water per year) at a maximum diversion rate of 21.55 cfs (9,671.64 gpm). Water will be discharged from two wastewater treatment outfalls authorized by TPDES Permit No. 10006-001 in segment 1227 of the Brazos River Basin described as follows: (1) Outfall 1 discharges into Buffalo Creek at Latitude 32.312 N, Longitude 97.395 W, also bearing N 28.001 E, 1,531 feet from the southwest corner of the Thomas H. Magness Survey, Abstract No. 601. (2) Outfall 2 discharges into West Buffalo Creek at Latitude 32.396 N, Longitude 97.408 W, also bearing N 27.867 W, 1,516 feet from the southeast corner of the Keelen Williams Survey, Abstract No. 884. The downstream diversion point is located 6.8 miles south from the City of Cleburne at Latitude 32.233 N, Longitude 97.397 S, also bearing S 67.666 E, 11,018 feet from the northwest corner of the Charles Sevier Survey, Abstract No. 752. Applicant indicates that there is .5% carriage loss per river mile for this watershed. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on June 30, 2004. Additional information for the application was received on August 9, 2004 and August 11, 2004. The application was accepted for filing and declared administratively complete on August 20, 2004. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5849; Terrabrook Cinco Ranch Southwest L.P., 10788 Kempwood, Houston, Texas, 77043, applicant, seeks a permit pursuant to Texas Water Code 11.121, 11.042 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant seeks to re-route Little Prong Creek, tributary of Willow Fork Buffalo Bayou, San Jacinto River Basin, within their

property boundary to flow into an abandoned sand mine pit, thus creating an on-channel reservoir for in-place recreational purposes with a normal capacity of 266.5 acre-feet and a surface area of 36.5 acres. The reservoir is located 15.7 miles northwest from the City of Richmond, Texas, bearing S68.3811E, 890.82 feet from the western corner of the S.M. Williams Survey, Abstract 463, in Fort Bend County, also being at Latitude 29.7111 N, Longitude 95.8128 W. Applicant also seeks to use the bed and banks of the reservoir to convey groundwater and ground-water-based effluent for subsequent diversion of 657.5 acre-feet of water for agricultural purposes to irrigate 145 acres out of several tracts totaling 1,917 acres in Fort Bend County. Water will be discharged into the reservoir at a point located at Latitude 29.7108 N, Longitude 95.8226 W. Water will be diverted from the reservoir at a point bearing N16.5667 W of the eastern corner of the I.& G. N. R.R. Survey No. 2, Abstract 364, also located at Latitude 29.7142 N, Longitude 95.8142 W at a maximum diversion rate of 1.56 cfs (700 gpm). Applicant estimates the evaporative losses to be 150.85 acre-feet of water per year for the reservoir. All water diverted for irrigation and to make up for evaporative losses will originate from groundwater sources. No appropriation of state water is requested. Ownership of the unincorporated land and irrigated land is evidenced by Special Warranty Deeds recorded as Document Nos. 2002071072, 2002071043, 2002071380, 2002071041, 2002071031, 2002089411, and 2002071214 in the Official County Clerk Records in Fort Bend County. Part of the project extends onto land owned by Katy Independent School District and the Meadowbrook Farms Golf Course. Both parties have provided consent of this application. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on June 15, 2004. Additional information was received on June 16, June 17, July 13, and August 6, 2004. The Executive Director reviewed the application and determined it to be administratively complete on July 6, 2004. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

#### Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

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](http://www.tceq.state.tx.us).

TRD-200405937

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 29, 2004



#### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on September 17, 2004, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Joe Pacheco dba Joe's Tire Disposal; SOAH Docket No. 582-04-6656; TCEQ Docket No. 2003- 0042-MSW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Joe Pacheco dba Joe's Tire Disposal on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200405852

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 22, 2004



#### 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 **November 8, 2004**. 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 November 8, 2004**. Written comments may also be sent by facsimile machine to the

enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: City of Agua Dulce; DOCKET NUMBER: 2004-0060-MLM-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10140-001, Regulated Entity (RN) Number 101720993; LOCATION: Agua Dulce, Nueces County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §§305.125(1) and (5), 317.3(e)(5), 391.6, 319.7(a), 319.9(c), and 319.11(a), TPDES Permit Number 10140-001, and the Code, §26.121(a)(1), by failing to adequately address operation and maintenance problems, by failing to maintain the alarm system, by failing to adequately maintain the west side clarifier, by failing to adequately operate and maintain the chlorine contact chamber, by failing to maintain compliance with total suspended solids (TSS), by failing to adequately comply with the test procedures for pH, dissolved oxygen, and total chlorine residual analysis, by failing to prevent the discharge and accumulation of solids into the receiving stream, and by failing to prepare and submit the annual sludge report; and 30 TAC §330.4(a), by failing to prevent the unauthorized storage and/or disposal of municipal solid waste; PENALTY: \$9,100; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(2) COMPANY: AquaSource Development Company dba Rose Meadows III Wastewater Treatment Plant; DOCKET NUMBER: 2004-0595-MWD-E; IDENTIFIER: TPDES Permit Number 14175-001; LOCATION: Needville, Fort Bend County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (4), TPDES Permit Number 14175-001, and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of partially treated wastewater on the ground and into a roadside ditch, by failing to maintain compliance with the TSS single grab concentration limit of 60.0 milligrams per liter (mg/L), and by failing to maintain compliance with TSS and flow; PENALTY: \$8,700; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Aspen Marble, Inc. dba Cultured Marble; DOCKET NUMBER: 2004-0680-AIR-E; IDENTIFIER: Air New Source Account Number TA-0924-G, RN102536737; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: custom made marble products; RULE VIOLATED: 30 TAC §116.110(a)(1) and §116.315(a), by failing to obtain a permit for operation; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Leila Pezeshki, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Baxter Oil Company L.L.C. and Baxter Oil Service Ltd. dba Baxter Oil Company; DOCKET NUMBER: 2004-0581-MSW-E; IDENTIFIER: Used Oil Registration Numbers A85361 and C82591, RN100529700; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: used oil handler; RULE VIOLATED: 30 TAC §324.7(1)(B) and (3)(A) and (B), by failing to maintain a current registration as a used oil and filter collection center and by failing to have a sign identifying the facility as a household used oil collection center; 30 TAC §324.11 and 40 Code of Federal Regulations (CFR) §279.45(d), by failing to provide secondary containment and by failing to register as an authorized used oil transporter; and 30 TAC §328.24(c), by failing to report used oil

filter operations on a bi-annual basis; PENALTY: \$3,200; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Big Bear Oil Company Inc.; DOCKET NUMBER: 2004-0390-PST-E; IDENTIFIER: RN104284047; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(6) COMPANY: Bissonnet Municipal Utility District; DOCKET NUMBER: 2004-0804-MWD-E; IDENTIFIER: TPDES Permit Number 11461-001, RN102177516; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11461-001, and the Code, §26.121(a), by failing to comply with the permitted daily average TSS limit of 15 mg/L; PENALTY: \$1,520; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Keith Blackwell dba Blackwell Septic Clean Out; DOCKET NUMBER: 2004-0815-SLG-E; IDENTIFIER: Sludge Transporter Registration Number 22796; LOCATION: Timpson, Shelby County, Texas; TYPE OF FACILITY: sludge transporter; RULE VIOLATED: 30 TAC §312.4(e) and the Code, §26.121(a), by failing to properly dispose of domestic septage and chemical toilet waste; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Cass County dba Moore's Landing County Park; DOCKET NUMBER: 2003-1210-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0340034; LOCATION: Domino, Cass County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(F) and (3), (f)(3), and (g), by failing to conduct additional microbial sampling, by failing to conduct repeat microbial monitoring, by exceeding the maximum contaminant level (MCL) for coliform, and by failing to provide public notification of sampling deficiencies and the MCL exceedence; PENALTY: \$1,150; ENFORCEMENT COORDINATOR: Larry King, (512) 239-7037; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(9) COMPANY: Chemicals Incorporated; DOCKET NUMBER: 2004-0662-IHW-E; IDENTIFIER: Solid Waste Registration (SWR) Number 37520, RN102145257; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: organic chemical manufacturing; RULE VIOLATED: 30 TAC §335.69(a)(1)(B) and §335.122(a)(9) and 40 CFR §262.34(a)(1)(ii) and §265.193(a)(1) and (e)(1), by failing to provide adequate secondary containment for a hazardous waste storage tank; and 30 TAC §335.323, THSC, §361.134(c), and the Code, §5.702, by failing to pay overdue hazardous waste and non-hazardous waste generation fees; PENALTY: \$13,500; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Joey Claybar and Ambrose Claybar dba Claybar Construction and the City of West Orange; DOCKET NUMBER: 2004-0785-MSW-E; IDENTIFIER: Unauthorized Municipal Solid Waste Disposal Site Number 455100040; LOCATION: Deweyville, Newton County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste disposal site; RULE VIOLATED: 30 TAC §330.5, by



failing to properly dispose of waste; PENALTY: \$1,140; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Collinsworth and Watson, Inc.; DOCKET NUMBER: 2004-1053-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 73670; LOCATION: Mesquite, Dallas 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 operation of the Stage II equipment; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to conduct a piping tightness test and by failing to conduct the annual line leak detector test; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Keith Fleming, (512) 239-0560; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Cooper Cameron Corporation; DOCKET NUMBER: 2004-0920-MWD-E; IDENTIFIER: TPDES Permit Number 0118583, RN102670882; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0118583, and the Code, §26.121(a), by failing to comply with the permit limits for ammonia nitrogen; PENALTY: \$2,864; ENFORCEMENT COORDINATOR: Christopher Miller, (915) 698-9674; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Crossroad Market, Inc. and Maria T. Vazquez dba Crossroad Market; DOCKET NUMBER: 2004-0869-PST-E; IDENTIFIER: PST Facility Identification Number 43430; LOCATION: Fresno, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and (B)(ii) and the Code, §26.346(a) and §26.3467(a), by failing to make available a valid, current delivery certificate, by failing to conduct inventory control and by failing to submit the underground storage tank (UST) registration and self-certification forms; 30 TAC §334.49(e)(2)(B) and the Code, §26.3475(d), by failing to maintain the results of all tests and inspections of the impressed current cathodic protection system; 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance; 30 TAC §334.50(b)(1)(A) and (2) and the Code, §26.3475(c)(1), by failing to monitor the USTs and by failing to monitor the piping; 30 TAC §334.7(d)(1)(A), by failing to notify the TCEQ of a change in owner or operator; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay public health service late fees; PENALTY: \$12,512; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Cypress Springs Water Supply Corporation South Plant; DOCKET NUMBER: 2004-1015-PWS-E; IDENTIFIER: PWS Number 0800016; LOCATION: Mount Vernon, Franklin County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level running annual average for total trihalomethanes; PENALTY: \$313; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(15) COMPANY: D & D Investments Partners, L.P.; DOCKET NUMBER: 2004-0936-SLG-E; IDENTIFIER: RN104187919; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: mobile sludge processing units; RULE VIOLATED: 30 TAC §312.4(a) and the Code, §26.121(a), by failing to obtain a permit before processing sludge; PENALTY: \$1,560; ENFORCEMENT COORDINATOR: Catherine

Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Dalton Oil, Inc.; DOCKET NUMBER: 2004-0493-PST-E; IDENTIFIER: RN102367240; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe that the owner or operator had a valid, current delivery certificate; PENALTY: \$1,400; ENFORCEMENT COORDINATOR: Keith Fleming, (512) 239-0560; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Davis Iron Works Operations Limited; DOCKET NUMBER: 2004-0479-PST-E; IDENTIFIER: PST Facility Identification Number 37848, RN102370046; LOCATION: Hewitt, McLennan County, Texas; TYPE OF FACILITY: fleet refueling center; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), (b)(1)(A) and (2)(B)(i)(D), (d)(1)(B)(ii) and (iii)(I), and the Code, §26.3475(a) and (c)(1), by failing to provide proper release detection and by failing to have each separate suction line tested; PENALTY: \$3,200; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Exxon Mobil Corporation dba ExxonMobil Refining and Supply Company; DOCKET NUMBER: 2002-1243-AIR-E; IDENTIFIER: Air Account Number HG-0232-Q and Permit Numbers 18287 and PSD-TX-730; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a) and (c)(7), Permit Number 18287, and THSC, §382.085(b), by failing to limit emissions; PENALTY: \$40,000; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Fleetpride, Inc.; DOCKET NUMBER: 2004-0761-MLM-E; IDENTIFIER: SWR Number 68868, RN101514008; LOCATION: Pharr, Hidalgo County, Texas; TYPE OF FACILITY: automotive repair operation and vehicle parts inventory; RULE VIOLATED: 30 TAC §324.4(2)(B), by failing to prevent putting used oil in waste that is to be disposed of in a municipal landfill; and 30 TAC §335.69(f)(5)(B)(i) and 40 CFR §262.34(d)(5)(ii)(A), by failing to post the name and telephone number of the emergency coordinator and emergency phone numbers by the telephone; PENALTY: \$920; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(20) COMPANY: City of Galena Park; DOCKET NUMBER: 2004-0963-MWD-E; IDENTIFIER: TPDES Permit Number 10831-002, RN101608842; LOCATION: Galena Park, Harris County, Texas; TYPE OF FACILITY: municipal wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10831-002, and the Code, §26.121(a), by failing to comply with the permitted ammonia nitrogen limits; PENALTY: \$7,140; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Georgia-Pacific Resins, Inc.; DOCKET NUMBER: 2004-1123-AIR-E; IDENTIFIER: Air Account Number AC-0011-N, RN101896439; LOCATION: Lufkin, Angelina County, Texas; TYPE OF FACILITY: resins manufacturing; RULE VIOLATED: 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to submit a deviation report in a timely manner; PENALTY: \$1,540; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL



OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Greensmiths, Inc.; DOCKET NUMBER: 2003-1326-IWD-E; IDENTIFIER: TPDES Permit Number 00350-000; LOCATION: Burnet, Burnet County, Texas; TYPE OF FACILITY: inactive graphite mine; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of storm water runoff from a mine tailings pile; PENALTY: \$600; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(23) COMPANY: Yoon K. Suh and Gregory L. Adams dba Griffis Corner; DOCKET NUMBER: 2004-1042-PST-E; IDENTIFIER: PST Facility Identification Number 47943, RN101566990; LOCATION: Flower Mound, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and (4)(C) and the Code, §26.3475(d), by failing to perform an operability test on the cathodic protection system; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.48(c) and the Code, §26.3475(c)(1), by failing to conduct manual or automatic inventory control procedures and record inventory volume measurements; 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475(a) and (c)(1), by failing to ensure that release detection equipment or procedures are provided for the USTs, the UST piping is tested and monitored, and that the UST line leak detectors are tested; 30 TAC §334.8(c)(4)(B) and (5)(A)(i) and the Code, §26.346(a) and §26.3467(a), by failing to ensure that the UST registration and self-certification form was fully and accurately completed and submitted and by failing to make available to a common carrier a valid, current delivery certificate; and 30 TAC §334.45(c)(3)(A), by failing to securely anchor shear valves at the base of each dispenser; PENALTY: \$13,200; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Hanover Compression Limited Partnership; DOCKET NUMBER: 2004-0646-AIR-E; IDENTIFIER: RN102093648; LOCATION: North Zulch, Madison County, Texas; TYPE OF FACILITY: gas treating and compression plant; RULE VIOLATED: 30 TAC §116.620(a)(1) and THSC, §382.085(b), by failing to comply with the 0.3 long tons per day limitation of total sulfur emissions and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to notify the TCEQ Regional Office in Waco of 22 reportable upset, startup, and maintenance emissions events; PENALTY: \$46,200; ENFORCEMENT COORDINATOR: Kensley Greuter, (512) 239-2520; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: Jupe Mills, Inc.; DOCKET NUMBER: 2004-0877-AIR-E; IDENTIFIER: Air Account Number MB-0130-I, RN101071975; LOCATION: West, McLennan County, Texas; TYPE OF FACILITY: feed mill and grain processing; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent nuisance conditions by allowing flakes to blow off of the property; and 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization before construction and operation of a grain storage and handling facility; PENALTY: \$2,448; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: City of La Joya; DOCKET NUMBER: 2004-0831-PWS-E; IDENTIFIER: PWS Number 1080213, RN101276863; LOCATION: La Joya, Hidalgo County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30

TAC §290.113(b)(1) and (f)(4) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes; 30 TAC §290.45(b)(2)(F) and THSC, §341.0315(c), by failing to provide two or more service pumps with a total capacity of two gallons per minute per connection; and 30 TAC §21.4 and the Code, §5.702, by failing to pay outstanding consolidated water quality fees; PENALTY: \$660; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(27) COMPANY: Mass Marketing Ltd. dba Super S Foods 327; DOCKET NUMBER: 2004-1107-PST-E; IDENTIFIER: PST Facility Identification Number 0027501, RN104298575; LOCATION: Somerset, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.45(c)(2)(C), by failing to inspect the impressed current cathodic protection system; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor tanks for releases; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: Masters Resources, LLC; DOCKET NUMBER: 2004-0701-AIR-E; IDENTIFIER: Air Account Numbers GB-0044-W and CI-0177-Q, RNs 102198058 and 100211069; LOCATION: Baytown, Chambers County, Texas; TYPE OF FACILITY: natural gas production compressor stations; RULE VIOLATED: 30 TAC §101.354(g) and THSC, §382.085(b), by exceeding the allocated emission allowance for nitrogen oxide emissions; PENALTY: \$6,400; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Wasim Prui dba Metro Star Grocery; DOCKET NUMBER: 2003-0678-PST-E; IDENTIFIER: PST Facility Identification Number 11312, RN101492791; LOCATION: Austin, Williamson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i) and the Code, §26.346(a) and §26.3467(a), by failing to ensure that the UST registration and self-certification form was fully and accurately completed and submitted and by failing to make available to a common carrier a valid, current delivery certificate; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(a), by failing to regularly inspect the cathodic protection system; and 30 TAC §334.48(c) and the Code, §26.3475, by failing to conduct inventory control for all USTs; PENALTY: \$6,425; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(30) COMPANY: Moorpark Village, Inc. dba Moorpark Village Water System; DOCKET NUMBER: 2004-0419-PWS-E; IDENTIFIER: PWS Number 1010674; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.45(g) and THSC, §341.0315(c), by failing to provide a total well capacity of 55.5 gallons per minute; 30 TAC §290.43(d)(2), by failing to provide all pressure tanks with a pressure release device; and 30 TAC §290.46(f)(3)(D)(ii), by failing to maintain records of results of annual pressure tank inspections; PENALTY: \$560; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: Nizamani, Inc. dba Delta Food Store; DOCKET NUMBER: 2004-0208-PST-E; IDENTIFIER: PST Facility Identification Number 65684; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to properly conduct

inventory control for all USTs; and 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test a line leak detector for performance and operational reliability and by failing to provide proper release detection for the piping; PENALTY: \$3,080; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(32) COMPANY: Sharon Washington dba S & J Tire Service; DOCKET NUMBER: 2003-1539- MSW-E; IDENTIFIER: Tire Transporter Registration Number 6200052, RN104065800; LOCATION: Linden, Cass County, Texas; TYPE OF FACILITY: scrap tire transporter; RULE VIOLATED: 30 TAC §328.58(b), by failing to complete the information on the whole used or scrap tire manifests and return the original to the generator; 30 TAC §328.57(c)(3) and (e) and THSC, §361.112(c), by failing to ensure that used or scrap tires or tire pieces are transported to an authorized scrap tire facility and by failing to submit an annual report indicating the number and type of used or scrap tires collected; PENALTY: \$4,400; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(33) COMPANY: Son & Chi Corporation dba Buckingham Chevron; DOCKET NUMBER: 2004-0943-PST-E; IDENTIFIER: PST Facility Identification Number 9119, RN101548972; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor tanks for releases; and the Code, §26.121, by failing to prevent the unauthorized discharge of gasoline into, or adjacent to, waters in the state; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(34) COMPANY: City of Stanton; DOCKET NUMBER: 2004-1031-PWS-E; IDENTIFIER: PWS Number 1590001; LOCATION: Stanton, Martin County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for trihalomethanes; PENALTY: \$390; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(35) COMPANY: Randy C. Matocha dba Star Express Lube; DOCKET NUMBER: 2004-1041- PST-E; IDENTIFIER: PST Facility Identification Number 58244, RN101894467; LOCATION: El Campo, Wharton County, Texas; TYPE OF FACILITY: lubrication store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: Don A. Stewart, Inc.; DOCKET NUMBER: 2004-0417-PST-E; IDENTIFIER: PST Facility Identification Number 45535, RN100527688; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: fuel distribution; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: \$15,600; ENFORCEMENT COORDINATOR: Susan Longenecker, (512) 239-0968; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(37) COMPANY: Target Corporation; DOCKET NUMBER: 2004-0655-EAQ-E; IDENTIFIER: Edwards Aquifer Registration Identification Number 11-96011902, RN102840766; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: department store;

RULE VIOLATED: 30 TAC §213.5(c)(3)(E)(i), by failing to conduct the required five-year sewage collection system testing; PENALTY: \$2,375; ENFORCEMENT COORDINATOR: Kensley Greuter, (512) 239-2520; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339- 2929.

(38) COMPANY: Texas Hog, LLC and Murphy Farms, LLC; DOCKET NUMBER: 2004- 0548-AGR-E; IDENTIFIER: TPDES Permit Number 04708 (Pending); LOCATION: Follett, Lipscomb County, Texas; TYPE OF FACILITY: swine farm; RULE VIOLATED: 30 TAC §321.33(f) and the Code, §26.121(a), by failing to obtain a permit; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(39) COMPANY: John S. Bewley dba Town & Country Food Mart; DOCKET NUMBER: 2004-1099-PST-E; IDENTIFIER: PST Facility Identification Number 48117; LOCATION: Bonham, Fannin 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: \$2,400; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239- 0667; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(40) COMPANY: James R. Washington; DOCKET NUMBER: 2003-1514-MSW-E; IDENTIFIER: James R. Washington; LOCATION: Linden, Cass County, Texas; TYPE OF FACILITY: scrap tire storage; RULE VIOLATED: 30 TAC §328.60(a) and THSC, §361.112(a), by failing to obtain a scrap tire store site registration; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-200405927

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 28, 2004

## ◆ ◆ ◆ 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 Days Before An Election Report Due March 1, 2004**  
Ron Wilson, P.O. Box 2910, Austin, Texas 78768

**Deadline: 8 Days Before An Election Report Due May 7, 2004**

Joyce Graham, Citizens for Responsible Government Wilmer, P.O. Box 94, Wilmer, Texas 75172

Vicki Lynn Sharpsteen, Keep Quality in Plano Schools, 3304 Kingsbridge Dr., Plano, Texas 75075

**Deadline: Semiannual GPAC Report Due July 15, 2004**

Mike Martin, Galveston Bay Political Education Fund, 909 Fannin St., Suite 3700, Houston, Texas 77010

Darwin McKee, Central Texas PAC Centre Development, P.O. Box 2513, Austin, Texas 78768-2513

Vicki L. Hoover, Rockwall County Democratic Party PAC, 6209 Scenic Dr., Rowlett, Texas 75088

Juan J. Maldonado, Americans For The Preservation Of Democracy, 300 E. US Highway 83, Suite G, Pharr, Texas 78577-4835

James S. Bowie, Citizens For Term Limitation, P.O. Box 16855, Houston, Texas 77222-6855

Kenneth Stinson, Glass, Molders, Pottery, Plastics & Allied Worker IU Local Union #284, 208 W. Eckman St., Longview, Texas 75601-7105

Richard H. Callison, Greater Texas Sportsmen's Coalition, 3405 Edloe St., Suite 380, Houston, Texas 77027-6523

Terry Sheneman, Texas Association of Alcoholism & Drug Abuse, 1005 Congress Ave., Suite 480, Austin, Texas 78701

Randhir Sahni, Indo American PAC, 1990 Post Oak Blvd., Suite 1200, Houston, Texas 77056-3844

Clarence B. Bagby, Houston Historic Preservation PAC, 2003 Kane St., Houston, Texas 77007

Bart C. Standley, Campaign for Houston, 3323 Richmond Ave., #C, Houston, Texas 77098

Trista Rae Allen, Texas Democratic Women PAC, 701 Rio Grande St., Austin, Texas 78701-2777

Karan K. Tarry, Doctors For Better Government, 5615 Morningside Dr. #402, Houston, Texas 77005-3218

Hector Carreno, Latina PAC, 714 Parker St., Houston, Texas 77007-5524

Bill Burdock, Eagle Mountain Political Fund, 714 S. Saginaw, Saginaw, Texas 76179

Ross C. Ahlstrom, Jr., Brazoria County Republican Men's Club PAC, 149 Oak Dr., Lake Jackson, Texas 77566-4231

Elliott J. Blumberg, Concerned Taxpayers of Arlington, 2600 Chinquapin Oak Ln., Arlington, Texas 76012-2840

Leslie J. Baldwin, El Paso Pachyderms Pack Fund, 9455 Viscount Blvd., Apt. 116, El Paso, Texas 79925-7008

John Carpenter, Pecos County Greens, P.O. Box 501, Fort Stockton, Texas 79735-0501

John R. King, Committee for Private Property Rights, 5203 County Road 1470, Lubbock, Texas 79407-5750

Jenny L. Arceo, Filipino American Caucus for Empowerment, 8901 Jones Rd., Apt. 116, Houston, Texas 77065

Derrick M. Mitchell, ANSUN PAC, 8007 Colgate St., Houston, Texas 77061

Kathie N. Ware, Concerned Citizens for Regional Water PAC, 12210 De Forrest St., Houston, Texas 77066-2905

Linda J. Curtis, Independent Texans, P.O. Box 14294, Austin, Texas 78761-4294

Rise J. Montrell, Urban Network PAC, P.O. Box 1686, Bellaire, Texas 77402-1686

John R. Pitts, Jr., Make Texas Proud Committee, 815A Brazos St., PMB 545, Austin, Texas 78701-2502

Javier A. Soza, McAllen Fire Fighter's Association Local 2602 PAC, 2044 Umar Ave., McAllen, Texas 78504

Shirley D. Schellhase, West Fort Bend Co. Republican Women, 5410 Westerham St., Fulshear, Texas 77441-4037

Eleazar Ramos, Voters for Better Government, 306 Puig Dr., Laredo, Texas 78045-8455

Dorothy Walker, Kessler Park Republican Women, 2711 Poinsettia Dr., Dallas, Texas 75211-9010

Ellis E. Tredway, Student Loan Political Action Committee, 13013 Partridge Bend Dr., Austin, Texas 78729-6460

Elizabeth Podesta, Hispanic Republican Women of San Antonio, 615 Stockton Dr., San Antonio, Texas 78216-6441

Joe Cardona, Bexar County Leadership PAC, 300 Kelly Dr., San Antonio, Texas 78214-2343

Steven Oscar Stubblefield, III, Kleberg County Republican Party (CEC), 1112 W. Richard Ave., Kingsville, Texas 78363-3416

Joyce Graham, Citizens for Responsible Government Wilmer, P.O. Box 94, Wilmer, Texas 75172-0094

Thomas C. Devor, Texas Political Online PAC, 5610 Oak Trail Lane, Houston, Texas 77091-4532

Joyce N. Tudky, Atoscosa Co. - Lytle Area Republican Women, P.O. Box 1633, Lytle, Texas 78052-1633

**Deadline: Semiannual JC/OH Report Due July 15, 2004**

Daniel L. Alford, IV, P.O. Box 275, Caldwell, Texas 77836-0275

David Arevalo, 627 Delaware St., San Antonio, Texas 78210-1716

Harlan F. Arledge, 1741 Utah Ave., San Angelo, Texas 76904

Rachel Barrios-Van Os, 1530 N. Alamo St., San Antonio, Texas 78215-1205

Boyd W. Bauer, P.O. Box 1436, Beeville, Texas 78104-1436

Caleb C. Bissett, 7216 164th St., #2, Flushing, New York 11365-4222

James R. Bridges, 5447 Willis Ave., Dallas, Texas 75206

Terry A. Canales, P.O. Box 730, Premont, Texas 78375

Richard H. Chenevert, 1300 Crossing Pl., Apt. 2511, Austin, Texas 78741

John Courage, 1938 Broken Oak St., San Antonio, Texas 78232

Gerry N. Crawford, RR 16 Box 2161, Lufkin, Texas 75901

Ernesto L. De Leon, 224 Jade Dr., Brownsville, Texas 78520-7716

James A. Deats, 898 Logans Way, Blanco, Texas 78606-4538

Jack D. Ewing, 2938 Meadow Brook Dr., League City, Texas 77573-4362

Michelle A. Fling, P.O. Box 353, Bastrop, Texas 78602-0353

Michael A. Flores, 3800 Lynwood St., El Paso, Texas 79936-2690

Jennifer L. Gale, 2409 Guadalupe St., Austin, Texas 78705

Xavier O. Garcia, 5919 Bayberry Way, Sugar Land, Texas 77479-4128

Le Roy F. Gillam, 13031 Abalone Way, Houston, Texas 77044

Juanita I. Gonzalez, 162 Bradley St., San Antonio, Texas 78211

Monica Granger, 1615 Hermann Dr., Unit 1335, Houston, Texas 77004

Paul Herrmann, 320 S. Polk St., Suite 902, Amarillo, Texas 79101

A. Robert Hinojosa, 7211 Regency Square Blvd., Houston, Texas 77036-3137

Elizabeth C. Jandt, 112 N. Austin St., Seguin, Texas 78155

Stephen Kyle Johnston, 678 Fawn Dr., Houston, Texas 77015-3508

Charlie Urbina Jones, 115 N. Cibolo St., San Antonio, Texas 78207

V. Sue Koenig, 1803 Silverado Dr., Weatherford, Texas 76087  
Victor E. Leal, 301 Lake Ridge Rd., Canyon, Texas 79015  
Sandy Madison, 3713 Linden Ave., Fort Worth, Texas 76107-4543  
Napoleon Madrid, 7811 Wild Eagle St., San Antonio, Texas 78255  
Raymundo Mancera, 2319 Tremont Ave., El Paso, Texas 79930-1113  
Edmond S. Maxon, 5346 Fairdale Lane, Houston, Texas 77056  
Rick Melendrez, 3030 Altura Ave., El Paso, Texas 79930-3326  
Lawrence T. Newman, P.O. Box 2584, Houston, Texas 77252  
Julie Iris Oldham, 4523 Allegheny Dr., San Antonio, Texas 78229  
James Partsch-Galvan, P.O. Box 88086, Houston, Texas 77288  
Robert L. Penrice, Professional Bldg., 2000 25th Ave. N., Texas City, Texas 77590  
Clifford E. Proffitt, 1000 Boxcar Blvd., Suite 4210, Fort Worth, Texas 76107-2278  
Yvonne Rodriguez, P.O. Box 220711, El Paso, Texas 79913  
Juan F. Solis, 328 Towne Vue Dr., San Antonio, Texas 78213  
Ivan E. Stober, 3713 Linden Ave., Fort Worth, Texas 76107  
Clifford F. William, 8915 Sangamon Ln., Houston, Texas 77074  
David B. Wilson, 3828 W. Wall St. #221, Midland, Texas 79703-7712  
Ron Wilson, P.O. Box 2910, Austin, Texas 78768-2910  
John Worldpeace, 1229 Heights Blvd., Houston, Texas 77008  
Virgil W. Yanta, 140 Highway 46 W., Boerne, Texas 78006-8114  
Alma Zepeda, 121 E. 12th St., Apt. 9, Houston, Texas 77008-6961

**Deadline: Monthly MPAC Report Due May 5, 2004**

Carlos Cardenas, 300 Lindberg, McAllen, Texas 78501

**Deadline: Monthly MPAC Report Due July 6, 2004**

Don L. King, Sensitive Care PAC, 500 N. Akard St. #3960, Dallas, Texas 75201

**Deadline: Monthly MPAC Report Due August 5, 2004**

Don L. King, Sensitive Care PAC, 500 N. Akard St. #3960, Dallas, Texas 75201

TRD-200405926

Sarah E. Woelk

Acting Executive Director

Texas Ethics Commission

Filed: September 28, 2004

**Department of State Health Services**

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Apple Chiropractic Clinic, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Apple Chiropractic Clinic, Inc. (registrant-R25186) of Houston. A total penalty of \$5,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

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-200405932

Cathy Campbell

Director, Legal Services

Department of State Health Services

Filed: September 29, 2004

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Benson Chiropractic, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Benson Chiropractic, Inc. (registrant-R18353) of Bay City. A total penalty of \$10,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

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-200405933

Cathy Campbell

Director, Legal Services

Department of State Health Services

Filed: September 29, 2004

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Eastex Veterinary Clinic, P.A.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Eastex Veterinary Clinic, P.A. (registrant-Un-registered) of Beaumont. A total penalty of \$8,000 is proposed to be assessed the company for alleged violations of 25 Texas Administrative Code, Chapter 289.

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-200405934

Cathy Campbell

Director, Legal Services

Department of State Health Services

Filed: September 29, 2004

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Fairmont Diagnostic Center and Open MRI, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Fairmont Diagnostic Center and Open MRI, Inc.

(registrant-R24938) of Pasadena. A total penalty of \$14,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

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-200405931

Cathy Campbell  
Director, Legal Services  
Department of State Health Services  
Filed: September 29, 2004



#### Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Schlumberger Technology Corporation

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Schlumberger Technology Corporation (licensee-L01833) of Sugar Land. A total penalty of \$24,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code, Chapter 289.

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-200405916

Cathy Campbell  
Director, Legal Services  
Department of State Health Services  
Filed: September 28, 2004



### Texas Health and Human Services Commission

#### Notice of Public Hearing

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on October 22, 2004, to receive public comment on proposed Rule Changes to §355.8063 concerning the reimbursement methodology for inpatient hospitals. The proposed rule amendment modifies the reimbursement methodology for high-volume payments and increases the overall inpatient reimbursement to eligible Medicaid high-volume hospitals. The amendment also adds language to provide for supplemental inpatient payments to the publicly owned hospital or hospital affiliated with a hospital district in Potter and Randall counties.

The public hearing will be held on October 22, 2004, at 1:00 PM, in the HHSC Lone Star Conference Room at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the building entrance facing Metric Boulevard.

Written comments regarding the proposed payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Arnulfo Gomez, HHSC Rate Analysis for Acute Care Services, Mail Code H-600, 1100 West 49th Street, Austin, Texas 78756-3160. Overnight or special delivery mail may be sent, or written comments may be hand delivered, to Mr. Gomez, HHSC Policy Development Support, 11209 Metric Boulevard, Austin, Texas. Alternatively, written comments may

be sent via facsimile to Mr. Gomez at (512) 491-1953. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Mr. Gomez (telephone: 512-491-1166; FAX: 512-491-1953; or E-mail: arnulfo.gomez@hhsc.state.tx.us) on or after October 8, 2004.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Mr. Gomez by October 18, 2004, so that appropriate arrangements can be made.

TRD-200405912

Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: September 27, 2004



### Texas Department of Insurance

#### Company Licensing

Application for admission to the State of Texas by INSURA PROPERTY AND CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Bedford Park, Illinois.

Application for admission to the State of Texas by FOUNDERS INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Des Plaines, Illinois.

Application for incorporation to the State of Texas by CNA CASUALTY COMPANY OF TEXAS, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Application for incorporation to the State of Texas by 21st CENTURY INSURANCE COMPANY OF THE SOUTHWEST, a domestic fire and/or casualty company. The home office is in Lewisville, Texas.

Application to change the name of THE MANUFACTURERS LIFE INSURANCE COMPANY (U.S.A.) to JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.), a foreign life, accident and/or health company. The home office is in Bloomfield Hills, Michigan.

Application to change the name of FORTIS INSURANCE COMPANY to TIME INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Milwaukee, Wisconsin.

Application to change the name of UNITED WISCONSIN LIFE INSURANCE COMPANY to AMERICAN MEDICAL SECURITY LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Green Bay, Wisconsin.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200405940

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: September 29, 2004



#### 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 to change the name of CONTRACTORS INSURANCE ADMINISTRATORS, INC. OF FLORIDA to FOUNDATION BENEFITS ADMINISTRATORS, INC., a foreign third party administrator. The home office is PLANTATION, FLORIDA.

Application to change the name of THE ONE BENEFIT SOURCE, INC. (Doing Business As THE ONE BENEFIT SOURCE) to PYRAMID BENEFIT SERVICES CORPORATION, a foreign third party administrator. The home office is MILWAUKEE, WISCONSIN.

Application to change the name of GROUP PRACTICE AFFILIATES, LLC to CENPATICO BEHAVIORAL HEALTH, LLC., a foreign third party administrator. The home office is RANCHO CORDOVA, CALIFORNIA.

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-200405941

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: September 29, 2004



## **Texas Lottery Commission**

Instant Game Number 511 "Pure Gold"

### 1.0. Name and Style of Game.

A. The name of Instant Game Number 511 is "PURE GOLD." The play style is "key number match with doubler."

#### 1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 511 shall be \$2.00 per ticket.

#### 1.2. Definitions in Instant Game Number 511.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, GOLD BAR SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000 and \$20,000.

D. Play Symbol Caption--the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 511 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
<b>GOLD BAR SYMBOL</b>	<b>DBLE</b>
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$2,000	TWO THOU
\$20,000	20 THOU

E. Retailer Validation Code--Three letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 511 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four digit Security Number placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize--A prize of \$50.00 or \$200.

I. High-Tier Prize--A prize of \$2,000 or \$20,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (511), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 000 and end with 250 within each pack. The format will be: 511-0000001-000.

L. Pack--A pack of "PURE GOLD" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two. Tickets 000 and 001 will be on the top page; tickets 002 and 003 on the next page; etc.; and tickets 248 and 249 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 "PURE GOLD" Instant Game Number 511 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 "PURE GOLD" Instant Game is determined once the latex on the ticket is scratched off to expose 22 Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBERS play symbols, the player wins prize indicated for that number. If a player reveals a gold bar play symbol, the player wins double the prize indicated. No portion of the display printing nor any

extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 22 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;



17. Each of the 22 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2. Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical "spot for spot" play data.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Winning Number play symbols on a ticket.

D. No three or more like non-winning prize symbols on a ticket.

E. The doubler symbol will only appear on intended winning tickets as dictated by the prize structure.

F. The doubler symbol will never appear more than once on a ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

#### 2.3. Procedure for Claiming Prizes.

A. To claim a "PURE GOLD" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PURE GOLD" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PURE GOLD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services 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 "PURE GOLD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "PURE GOLD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8. Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned

by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 11,040,000 tickets in the Instant Game Number 511. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 511 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	1,402,080	7.87
\$4	761,760	14.49
\$5	132,480	83.33
\$10	143,520	76.92
\$20	44,160	250.00
\$50	44,160	250.00
\$200	14,720	750.00
\$2,000	64	172,500.00
\$20,000	12	920,000.00

\*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 4.34. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 511 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 511, 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-200405928  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: September 28, 2004



**Public Utility Commission of Texas**

Notice of Application 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 an application on September 22, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of Guadalupe Valley Communications Systems, L.P. request for NXX codes.

Docket Title and Number: Application of Guadalupe Valley Communications Systems, L.P. for Waiver of NeuStar, Incorporated Denial of NXX Code Request. Docket Number 30213.

The Application: Guadalupe Valley Communications Systems, L.P. submitted a Central Office Code (NXX) Assignment Request to the Pooling Administrator (PA) for a 1,000 number block for in Boerne, Texas. The PA denied the request based on the grounds that Guadalupe Valley Communications Systems, L.P. did not meet the rate center-based month-to-exhaust criteria set forth in the Central Office Code Guidelines. Guadalupe Valley Communications Systems, L.P. seeks a

waiver of the Pooling Administrator's denial of its request for a 1,000 number block for Boerne, Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 22, 2004. 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 30213.

TRD-200405913  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 27, 2004



#### 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 a petition on September 23, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of Verizon Southwest's request for an additional NXX code to satisfy the business requirements of Citigroup Voice Operations.

Docket Title and Number: Petition of Verizon Southwest for Waiver of Denial of Numbering Resources. Docket Number 30222.

The Application: Verizon Southwest submitted a thousands block application form to the Pooling Administrator (PA) for assignment of the number blocks necessary to meet Citigroup Voice Operations request. The PA denied the request based on the grounds that Verizon Southwest did not meet the rate center-based month-to-exhaust criteria set forth in the Thousands Block Number Pooling Administration Guidelines. Verizon Southwest seeks a waiver of the Pooling Administrator's denial of its request for an additional NXX code to satisfy the business requirements of Citigroup Voice Operations.

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 October 22, 2004. 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 30222.

TRD-200405922  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 28, 2004



#### Railroad Commission of Texas

##### Revised Forms Adopted with Amendments to 16 TAC §3.80

The Railroad Commission of Texas adopts changes to certain Oil and Gas Division forms as part of the adopted amendments to 16 TAC §3.80, relating to Commission Forms, Applications, and Filing Requirements, published in this issue of the *Texas Register*. The adopted amendments to §3.80 are in the Table only and refer to changes in the Form P-13, Application of Landowner to Condition an Abandoned Well for Fresh Water Production (Figure 1); the Form W-1, Application for Permit to Drill, Recomplete or Re-Enter (Figure 2); the Form W-1 instructions (Figure 3); and the Form W-1X, Application for Future Re-Entry of Inactive Well Bore and 14(b)(2) Extension Permit (Figures 4 and 5, showing the front and back of the form, respectively). The Commission received no comments on the proposed amendments to §3.80 or the proposed forms corrections. The only changes on the Forms are the "draft" revision dates on the Forms are changed to the effective date for the adoption of the amendments to §3.80 and, on Form P-13, the distribution list of the entities to which the Commission will mail a copy of an approved Form P-13 is clarified.

Issued in Austin, Texas, on September 21, 2004.

<b>RAILROAD COMMISSION OF TEXAS OIL AND GAS DIVISION</b>		<b>APPLICATION OF LANDOWNER TO CONDITION AN ABANDONED WELL FOR FRESH WATER PRODUCTION</b>		<b>FORM P-13</b> EFF 10/04	
1. Field Name (as per RRC Records or Wildcat):		2. Field No.:		3. RRC District No.:	
4. Operator Name (as shown on P-5):		5. Operator P-5 No.:		6. County:	
7. Lease Name:		8. RRC Lease/Gas ID No.:		9. API No.:	
				42-	
10. Well No.:		11. Location (Section, Block, and Survey):			
12. If the Operator has changed within the last 60 days, provide the name, the P-5 No., and the address of the former Operator:					
13. If the well has been worked over, provide the former Field name (and reservoir name) and number:					
14. Is this an Abandoned Producer or a Dry Hole? <input type="checkbox"/> YES <input type="checkbox"/> NO If this is a Dry Hole, or if the Operator did not file current completion data, <b>ATTACH</b> casing and cement data for casings penetrating groundwater depths.					
15. Type of Electric or other Log run:		16. Completion date of the well:			
17. Proposed Plug-Back Depth of well for fresh water production (ft):		18. Base of Usable Quality Water (ft.):		19. Date of TCEQ letter:	
				TCEQ File No.: SC-	
20. FOR COMPLETION BY LANDOWNER: <i>information concerning groundwater conservation districts may be found at <a href="http://www.texasgroundwater.org">www.texasgroundwater.org</a>.</i>					
<input type="checkbox"/> I have permitted the well as a water well with the _____ Groundwater Conservation District. <input type="checkbox"/> I have registered the water well with the _____ Groundwater Conservation District. <input type="checkbox"/> The _____ Groundwater Conservation District does not require that the water well be permitted or registered. <input type="checkbox"/> There is no groundwater conservation district for the area in which the well is located.					
<p>The undersigned Operator and Landowner hereby make application for the Operator to be authorized to plug the above well in such a manner that the well bore be left open to the above depth so that the Landowner may condition and equip such well bore to that depth for production of fresh water.</p> <p>The undersigned Landowner further obligates himself, his heirs, successors, and assignees, as a condition to the Commission's approval of this application, to complete the plugging of the well if and when it is abandoned as a fresh water well, or when, because of the condition of the well is found to constitute a menace to any oil, gas, or fresh water strata in that area, such plugging is ordered by the Commission.</p> <p>Under §89.011, Tex. Nat. Res. Code, the duty to properly plug the well ends only when the well has been properly plugged in accordance with Commission requirements up to the base of usable quality water stratum; the Commission has approved the application to condition the well for usable quality water production operations; and the landowner has registered the well with, or has obtained a permit for the well from, the groundwater conservation district, if applicable.</p> <p>The authority to complete this well in the manner prescribed shall not be construed as authority for any party to produce fresh water from the well.</p>					
<b>CERTIFICATION</b>					
I declare under penalties prescribed in §91.143, Tex. Nat. Res. Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that data and facts stated therein are true, correct, and complete, to the best of my knowledge.					
<b>LANDOWNER</b>			<b>OPERATOR</b>		
Date:			Date:		
Signature of Landowner:			Signature of Operator or Authorized Representative:		
Name of Landowner: (type or print)			Name of Person and Title: (type or print)		
Street Address or P. O. Box:			Street Address or P. O. Box:		
City, State, Zip Code:			City, State, Zip Code:		
Telephone ( )			Telephone ( )		
<b>FILING INSTRUCTIONS</b>					
1. The completed <b>original</b> of this form must be recorded in the county in which the well is located. SEE the back of this form.					
2. Form P-13 showing the recording data, along with the Notice of Intent to Plug and Abandon (Form W-3A) must be filed in the appropriate Commission District Office, along with a copy of the TNRCC/TCEQ Surface Casing MC 151 letter (or other acceptable equivalent letter).					
3. After plugging back the well, the Operator shall file one copy of the Commission-approved Form P-13 with the original and one copy of Form W-3 (Plugging Record), in the appropriate Commission District Office.					
RAILROAD COMMISSION APPROVAL: _____			DATE OF APPROVAL: _____		
(Signature of RRC Representative)					
DISTRIBUTION: The Commission will mail a copy of the approved form to the: (1) Landowner; (2) Operator; (3) Texas Commission on Environmental Quality (TCEQ); (4) Ground Water Conservation District, if applicable; (5) Texas Department of Licensing and Regulation (TDLR); and (5) Commission District Office.					

THE STATE OF TEXAS

COUNTY OF \_\_\_\_\_

BEFORE ME, the acknowledged authority, on this day personally appeared \_\_\_\_\_, referred to as landowner in the instrument attached hereto, and being by me duly sworn acknowledged to me that he or she executed said instrument for the purposes and consideration therein expressed.

\_\_\_\_\_  
Notary Public in and for

\_\_\_\_\_ County, Texas

Recorded this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ Clerk

**FOR USE OF COUNTY CLERK**

**RECORDING DATA:**

Enter if Assigned: API No.: 42-  Drilling Permit No.:  Rule 37/38 Case No.:	<b>RAILROAD COMMISSION OF TEXAS</b> <b>OIL AND GAS DIVISION</b>  <b>APPLICATION FOR PERMIT TO DRILL, RECOMPLETE OR RE-ENTER</b>	<b>FORM W-1</b> EFF 10/04 Drilling Permit Fee Based on Depth: 0'-2000'    \$200    2001'-4000'    \$225 4001'-9000'    \$250    >9000'    \$300 Expedited Service Fee    ADD \$150 Rule 37/38 Exception Fee    ADD \$200
1. RRC Operator No.: _____		3. Operator Address (include street, city, state, zip): _____
2. Operator Name (as shown on P-5 Organization Report): _____		5. Well No.: _____
<b>GENERAL INFORMATION</b>		
6. Purpose of Filing (Mark ALL appropriate boxes): <input type="checkbox"/> New Drill <input type="checkbox"/> Recompletion <input type="checkbox"/> Reclass <input type="checkbox"/> Field Transfer <input type="checkbox"/> Re-enter <input type="checkbox"/> Amended <input type="checkbox"/> Amended as Drilled (BHL) (Also File Form W-1D)		
7. Wellbore Profile (Mark ALL appropriate boxes): <input type="checkbox"/> Vertical <input type="checkbox"/> Horizontal (Also File Form W-1H) <input type="checkbox"/> Directional (Also File Form W-1D) <input type="checkbox"/> Sidetrack		
8. Total Vertical Depth: _____ 9. Do you have the right to develop minerals under any right of way? <input type="checkbox"/> Yes <input type="checkbox"/> No 10. Is this well subject to Statewide Rule 36 (hydrogen sulfide area)? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>SURFACE LOCATION AND ACREAGE INFORMATION</b>		
11. RRC District No.: _____    12. County: _____    13. Surface Location: <input type="checkbox"/> Land <input type="checkbox"/> Bay/estuary <input type="checkbox"/> Inland waterway <input type="checkbox"/> Offshore		
14. This well is to be located _____ miles in a _____ direction from _____, which is the nearest town in the county.		
15. Section: _____    16. Block: _____    17. Survey: _____		18. Abstract No: _____    19. Distance to nearest pooled unit or unutilized tract: _____
21. Lease Perpendiculars: _____ ft. from the _____ line and _____ ft. from the _____ line.		
22. Survey Perpendiculars: _____ ft. from the _____ line and _____ ft. from the _____ line.		
23. Is this a pooled unit? <input type="checkbox"/> Yes <input type="checkbox"/> No    24. Utilization Docket No: _____    25. Are you applying for Substandard Acreage Field? <input type="checkbox"/> Yes (attach Form W-1A) <input type="checkbox"/> No		
<b>FIELD INFORMATION</b> List all fields of anticipated completion including Wildcat. List one zone per line. Attach an additional Form W-1 if you require more space.		
26. RRC District No.	27. Field No.	28. Field Name (exactly as shown in RRC records)
	29. Well Type	30. Completion Depth
	31. Distance to Nearest Well in this Lease & Reservoir	32. No. of Wells on this Lease in this Reservoir
<b>BOTTOMHOLE LOCATION INFORMATION is required for DIRECTIONAL, HORIZONTAL, AND AMENDED AS DRILLED PERMIT APPLICATIONS - Attach FORM W-1D/FORM W-1H as appropriate</b>		
<b>CERTIFICATE</b>		
I declare under penalties in Sec. 91.143, Texas Natural Resources Code, that I am authorized to file this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct, and complete to be the best of my knowledge.		
Name of Representative (Print) _____    Signature _____    Date (mm/dd/yy) _____		E-mail Address (OPTIONAL - If provided, e-mail address will become part of this public record.) _____
Telephone (AC and number) _____		<b>RRC Use only</b>

**A. COMPLIANCE.** In order to file a Form W-1 you must have a current P-5 Organization Report and financial assurance (if required) on file with the Commission (RRC) and be in compliance with all RRC rules and orders. **DO NOT BEGIN DRILLING OPERATIONS UNTIL YOU HAVE RECEIVED AUTHORIZATION FROM THE RRC.** The operator must set and cement sufficient surface casing to protect all usable-quality water strata, as defined by the Texas Commission on Environmental Quality, or its predecessor or successor agencies.

**B. WHERE AND WHAT TO FILE.** File with the RRC in Austin the original Form W-1 application package, which consists of the completed Form W-1, fee payment, plat, completed Forms W-1D or W-1H, as necessary, and other documents as required. For fees, make check or money order payable to Railroad Commission of Texas. For information on use of credit cards or pre-paid accounts, contact the RRC. The Rule 37/38 exception fee covers one or more exceptions on the same application; if other than a "new drill," provide the original exception case or docket number. Fees are non-refundable. The RRC may waive fees if an amended application is filed at the request of RRC. Before you may initially file computer-generated paper Forms W-1, the RRC must approve the template. You may also electronically file drilling permit applications. For information, call (512)463-6751 or check the RRC's web site at [www.rrc.state.tx.us](http://www.rrc.state.tx.us)

**C. PURPOSE OF FILING (Item 6.)** *Recompletion* is working over an existing wellbore to complete in a different field/reservoir. *Re-entry* is going back into a wellbore that has been plugged to the surface. *Reclassification* is changing an existing well originally permitted only as injection/disposal or other service well to an oil or gas producing well or changing an existing well in the Panhandle East or West fields from oil to gas or gas to oil production. For anything other than a "New Drill," indicate the API number. If the API number is not known, in "Operator Remarks" area, give the original operator, lease, and well identification and date of original completion or plugging. A materially amended permit requires a new Form W-1 and applicable fees, and usually involves the addition of a field/reservoir or a change in location on a previously permitted well. Include the original drilling permit number when filing an application for an amended permit.

**D. WELLBORE PROFILE (Item 7.)** Check "sidetrack" only for recompletions or re-entries, if applicable. File **FORM W-1D, Supplemental Directional Well Information**, if the proposed well configuration will be directional with one or more bottomhole locations. File **FORM W-1H, Supplemental Horizontal Well Information**, if the proposed well configuration will be horizontal with one or more terminus locations. For these types of completions, several different sets of location data are required. This data may or may not be the same for each field applied for; however, each different proposed bottomhole location or lateral must be associated with at least one field

**E. LOCATION SPACING AND DENSITY.** The proposed location must be "regular" in terms of the RRC's spacing (Rule 37 or field rules) and density (Rule 38 or field rules) requirements for each listed field; otherwise, an exception to those requirements must be sought.

**REGULAR** locations are in accordance with either (1) statewide spacing minimums – 467' from the nearest lease line and 1,200' from the nearest well (applied for, permitted or completed) on the same lease in the same reservoir and statewide density minimums – 40 acres; (2) spacing and density minimums, (which may vary according to depth) for County Regular Fields (Districts 7B, 9, and McCulloch County), where there are no field rules and the proposed depth is 5,000' or shallower; or (3) spacing and density standards set out in special rules for the field. Field and County Regular rules are available on the Internet at [www.rrc.state.tx.us](http://www.rrc.state.tx.us).

**EXCEPTIONS** to minimum standard spacing and density requirements may be requested. The application requires additional information on a *certified plat* (see G, below) and a list of names and addresses of all offsetting operators or unleased mineral interest owners of each tract that is contiguous to the drill site tract. Clearly key the list to the plat so that each tract/operator can be readily identified. If you do not have the right to develop the minerals under any right-of-way that crosses or is contiguous to this tract and the well requires a Rule 37 or 38 exception, also list the name and address of the entity that holds that right. If requesting only a *lease-line spacing exception*, list only the names and addresses of all affected persons for tracts closer to the well than the greater of ½ the prescribed minimum between-well spacing distance or the minimum lease-line spacing distance. If requesting only a *between-well spacing exception*, list only the names and addresses of all affected persons for each adjacent tract and each tract nearer to the well than the greater of ½ the prescribed minimum between-well spacing distance or the minimum lease-line spacing. **NOTE:** If you penetrate a Rule 37 or 38 field/reservoir not listed on the application, you will not necessarily be allowed to use the existence of this wellbore as justification for an exception to complete this wellbore in such field/reservoir in the future.

#### F. ACREAGE – OTHER

**Pooled Units:** Multiple tracts may be pooled together to meet minimum drilling unit acreage requirements. Complete and attach Form P-12, *Certificate of Pooling Authority*. On the plat (see G, below) outline pooled unit AND each tract listed on the Form P-12. If pooled or unitized through a hearing and the Docket number is noted in Item 24 of Form W-1, no Form P-12 (Certificate of Pooling Authority) is needed.

**Substandard Acreage:** Complete and submit a Form W-1A, *Substandard Acreage Drilling Unit Certification*, with the first and only well on a substandard tract or lease, and when using surplus acreage as a substandard pooled unit.

**Contiguous Acres:** Rule 39 requires that all acres in the lease or pooled unit be contiguous. If a Rule 39 exception has already been granted for the subject lease or unit, provide the docket number and issuance date in the box in the upper left-hand corner of the Form W-1.

**G. PLAT.** All drilling permit applications must be accompanied by a legible, accurate plat, at a scale of 1" = 1,000' and showing at least the lease or pooled unit line nearest the proposed location AND the nearest section/survey lines. The plat for the initial well on a lease or pooled unit must be of the entire lease or unit (including all tracts being pooled). The plat for subsequent wells on the pooled unit for which a Form P-12 is required must show the entire pooled unit. If necessary, submit the large area plat at a scale of 1" = 2,000' showing the entire lease. Plats for Rule 37 and/or 38 exceptions must also be certified and have offsets keyed to the offset listing (see E, above). The plat must include (1) the surface location of the proposed drilling site (for directional wells, also indicate projected bottomhole location and for horizontal wells also indicate projected penetration points and terminus locations); (2) a line and the distance from the surface location to the nearest point on the lease line or pooled unit line; if there is an unleased interest in a tract of the pooled unit that is nearer than the pooled unit line, use the nearest point on that unleased tract boundary; (3) a perpendicular line from two nearest non-parallel survey/section lines to the proposed surface and the proposed bottomhole or terminus locations and indicate distances. (4) a line from the proposed surface location to the nearest oil or gas well (applied for, permitted, or completed) in the same lease or pooled unit and in the same field (also indicate the distance and the API number of that well); (5) the name, as applicable, of the county, survey, abstract, section, block, lot, subdivision, etc.; (6) a scale bar; and (7) the northerly direction.

#### H. INDIVIDUAL ITEMS ON THE FRONT OF FORM W-1:

**Item 8.** For a recompletion, provide the projected—not measured—true vertical depth. For a plug-back recompletion, give the depth of the plug setting.

**Item 10.** If the well is subject to Rule 36, you must file a Form H-9 (Certificate of Compliance Statewide Rule 36) with the appropriate RRC district office.

**Item 11.** Provide RRC District No. associated with the County listed in Item 12.

**Item 19.** For pooled units, if there is an unleased/non-pooled interest in a tract of the pooled unit that is nearer than the pooled unit line, give the distance to the nearest point on that unleased/non-pooled tract boundary.

**Item 26.** Provide the RRC District No. associated with the field.

**Item 29.** Use the following codes for Well Type: O = oil; G = gas; B = oil and gas; I = injection/disposal; R = storage; S = service; V = water supply; C = cathodic protection; T = exploratory test (core, stratigraphic, seismic, sulfur, uranium).

**Item 30.** Enter the approximate completion depth at which you may complete in each field listed. This depth must be less than or equal to the Total Vertical Depth.

**Item 31.** Distance to Nearest Well. Required only for wells identified as oil or gas in Item 29 and includes distance to any applied for or permitted location or completed well. This information is necessary for the purpose of ensuring compliance with spacing and density rules.

**Item 32.** Provide the total combined number of oil and gas wells only (include all applied for or permitted locations and completed wells). Do NOT include injection, disposal or other types of service wells.

APPLICATION FOR FUTURE  
RE-ENTRY OF INACTIVE WELL BORE  
AND 14(b)(2) EXTENSION PERMIT

**READ INSTRUCTIONS ON BACK**

1. Operator name (exactly as shown on P-5 Organization Report)	2. Operator P-5 No.	3. RRC District No.	4. Page ____ of ____
5. Operator address (including city, state, and zip code)			

6. Individual well information (identification must be exactly as shown on Proration Schedule; for well number spacing, see below)					
Field Name	Oil Lease or Gas ID No.	Well Number *	API No. 42-	County	
Lease Name				Date Inactive mo/yr	Current 14(b)(2) Ext. App. Or Docket No.
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					
(8)					
(9)					
(10)					

**CERTIFICATION:**

I certify under penalties prescribed by the Texas Natural Resources Code and the Texas Penal Code that: 1) the identified wells are in compliance with the conservation laws of the State of Texas and all rules, regulations, and orders of the Railroad Commission of Texas; 2) that the information given in this application is true, complete, and correct; and 3) the identified wells will be re-entered at a future date or otherwise kept in compliance with the provisions of Statewide Rule 14.

SIGNATURE \_\_\_\_\_ NAME (Print or Type) \_\_\_\_\_

TITLE \_\_\_\_\_ PHONE ( ) \_\_\_\_\_ DATE \_\_\_\_\_

\* To ensure prompt processing of this application, well numbers and letters must be positioned and spaced exactly as shown on the Proration Schedule. Use the chart below for reference.

**WELL NUMBERS**

Position	Requirement	Purpose	Example
1	Alphabetic, Numeric, or Blank	Tract designation or high well number	A--1-- 1296--
2, 3 & 4	Numeric or Blank	Basic well number	--1-- --136--
5	Alphabetic or Blank	Replacement well code	--122A-- --1B--
6	Alphabetic or Blank	Multiple completion designation as per RRC schedule or coding system	--10-I --129-C

**-RRC USE ONLY-**

Approved by \_\_\_\_\_

Date \_\_\_\_\_



**Instructions**  
**FORM W-1X APPLICATION FOR FUTURE RE-ENTRY**  
**OF INACTIVE WELL BORE AND**  
**14(b)(2) EXTENSION PERMIT**

REFERENCE: STATEWIDE RULE 14

EFF. 10/04

WHO IS TO FILE	<p>An operator may file a Form W-1X to support an application for a Statewide Rule 14(b)(2) extension instead of filing a performance bond or letter of credit. Statewide Rule 14(b)(2) extensions are required for the following:</p> <ul style="list-style-type: none"><li>• a completed well that has been inactive for a period of one year or more; or</li><li>• an uncompleted well on which drilling has ceased for a period of one year or more.</li></ul>
WHAT AND WHERE TO FILE	<p>File an <b>original only</b> of the completed Form W-1X with:</p> <p style="margin-left: 40px;">The Railroad Commission of Texas Oil and Gas Division – P5 Unit P. O. Drawer 12967 – Capitol Station Austin, Texas 78711-2967</p>
MULTIPLE FORM APPLICATIONS	<p>If permits are requested for more than ten (10) wells, attach additional Form W-1X. All items must be completed on each form.</p>
INDIVIDUAL WELL INFORMATION	<p>In Item 6, Individual Well Information, list each well with identification exactly as shown on the Proration Schedule. The spacing and positioning of the characters and/or numbers of the well number is critical to ensure prompt processing of your application. Completion papers (Form W-2 for oil wells and Form G-1 for gas wells) must be on file with the Commission for each well that is listed; if an oil lease number or gas ID number has not yet been assigned, write "NA." If a listed well currently has a 14(b)(2) extension based on a bond or letter of credit, include its application number, if available; an approved W-1X future re-entry permit for that well will take the place of any previously granted 14(b)(2) extension permit. If a listed well is currently under a plugging docket, include its docket number.</p>
H-15 TESTING	<p>Prior to approval of a 14(b)(2) extension permit, the operator must file evidence of H-15 testing. A successful fluid level test conducted no earlier than 90 days prior to the W-1X filing, or a successful mechanical integrity test conducted no earlier than 4 years prior to the W-1X filing, will fulfill this requirement.</p>
RENEWALS	<p>Approximately 30 days before the permit expiration date, the Commission will send the operator a renewal notice.</p>
FILING FEE	<p>Pursuant to statutory changes effective September 1, 2004, no fee is required for filing Form W-1X.</p>

SEE ALSO STATEWIDE RULES 3, 8 AND 13

TRD-200405876  
Mary Ross McDonald  
Managing Director  
Railroad Commission of Texas  
Filed: September 23, 2004

## Texas Department of Transportation

### Request for Proposal--Outside Counsel

The Texas Department of Transportation (department) requests proposals from law firms interested in representing the department in open records litigation. This request for proposal (RFP) is issued for the purpose of identifying qualified legal firms able to provide legal representation required by the department and the Texas Transportation Commission (commission) on litigation concerning statutory exceptions to disclosure of certain information in response to requests for this information by the public and as more fully set out as follows. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before the selected outside counsel may be employed.

**Description:** The department is a state agency which has the primary responsibility in Texas of constructing, maintaining, and financing transportation projects. In connection with this responsibility, the department generates information, documents, and records which, from time to time, may be exempt from disclosure under the Public Information Act. In the event the department receives an Open Records Decision or letter opinion from the Open Records Division in response to the department's request to determine the department's duty to disclose certain types of information that the department believes are exempt from disclosure, the department may seek representation from the Office of the Attorney General to challenge the decision pursuant to Government Code, §552.324, et sequitur. In the event the Office of the Attorney General declines or is not able to represent the department in litigation to withhold such information, the department may require outside counsel. The department intends to engage outside counsel in the event of these contingencies to represent it in such litigation. Accordingly, the department invites responses to this RFP from firms which are qualified to perform these legal services. Such firms must have considerable prior experience with, as well as extensive knowledge of, administrative law, the Public Information Act, and litigation under this act.

**Responses:** Responses to this RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include the following information: (1) a description of the firm's qualifications for performing the legal work described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on the matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, location(s), and resources of the firm's offices which might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services;

(5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Texas Department of Transportation, or to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas (except on the matters for which the department seeks representation).

**Note:** The department is particularly concerned with issues of any conflict of interest(s). Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

**Format and Person to Contact:** One copy of the proposal is requested. The proposal should be typed, preferably double spaced on 8 1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal" and addressed to Richard Monroe, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, telephone Richard Monroe, General Counsel, at (512) 463-8630.

**Deadline for Submission of Response:** All proposals must be received by the Texas Department of Transportation at the previously stated address not later than 5:00 p.m., on November 8, 2004.

TRD-200405924  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: September 28, 2004

## Texas Workers' Compensation Commission

### Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative vacancies:

#### *Primary*

- \* Public Health Care Facility
- \* Podiatrist
- \* Registered Nurse

#### *Alternate*

- \* Public Health Care Facility
- \* Dentist
- \* Pharmacist
- \* Podiatrist
- \* Registered Nurse
- \* Employer
- \* Employee

\* General Public Representative 1

\* General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at <http://www.twcc.state.tx.us>. Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at 512-804-4850.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

**LEGAL AUTHORITY.** The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

**PURPOSE AND ROLE.** The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

**COMPOSITION Membership.** The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

**Terms of Appointment:** Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

**RESPONSIBILITY OF MAC MEMBERS Primary Members.** Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate: a. Preparation of a suitable agenda. b. Planning MAC activities. c. Establishing meeting dates and calling meetings. d. Establishing subcommittees. e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF. The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES. The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS. When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT. No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER. Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200405935

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: September 29, 2004

◆ ◆ ◆

### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

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

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

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

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the TAC, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

**Change of Address**

*(Please fill out information below)*

**Paper Subscription**

One Year \$200       First Class Mail \$300

**Back Issue (\$10 per copy)**

\_\_\_\_\_ Quantity

Volume \_\_\_\_\_, Issue # \_\_\_\_\_.

*(Prepayment required for back issues)*

NAME \_\_\_\_\_

ORGANIZATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_

FAX NUMBER \_\_\_\_\_

Customer ID Number/Subscription Number \_\_\_\_\_

*(Number for change of address only)*

**Payment Enclosed via**  Check       Money Order

Mastercard/VISA Number \_\_\_\_\_

Expiration Date \_\_\_\_/\_\_\_\_ Signature \_\_\_\_\_

Please make checks payable to the Secretary of State. Subscription fees are not refundable.  
Do not use this form to renew subscriptions.

Visit our home on the internet at <http://www.sos.state.tx.us>.

\_\_\_\_\_  
\_\_\_\_\_  
Periodical Postage

PAID

Austin, Texas  
and additional entry offices  
\_\_\_\_\_  
\_\_\_\_\_