
TEXAS REGISTER

Volume 35 Number 19

May 7, 2010

Pages 3549 – 3702

*Kathryn Fritts
12th Grade*



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

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

Texas Register, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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 Albany, N.Y. and at additional mailing offices.

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

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

<http://www.sos.state.tx.us>
register@sos.state.tx.us

Secretary of State –
Hope Andrade

Director –
Dan Procter

Staff
Leti Benavides
Dana Blanton
Kris Hogan
Belinda Kirk
Roberta Knight
Jill S. Ledbetter
Juanita Ledesma
Preeti Marasini

IN THIS ISSUE

GOVERNOR

Appointments.....3555

ATTORNEY GENERAL

Request for Opinion.....3557

Opinions.....3557

TEXAS ETHICS COMMISSION

Ethics Advisory Opinions.....3559

PROPOSED RULES

TEXAS ETHICS COMMISSION

SWORN COMPLAINTS

1 TAC §12.81.....3561

STATE OFFICE OF ADMINISTRATIVE HEARINGS

DISPUTE RESOLUTION PROCESSES APPLICABLE TO CERTAIN CONSUMER HEALTH BENEFIT DISPUTES

1 TAC §167.1, §167.3.....3562

1 TAC §167.51.....3563

1 TAC §§167.101, 167.103, 167.105, 167.107, 167.109.....3563

1 TAC §167.151.....3564

1 TAC §§167.201, 167.203, 167.205, 167.207, 167.209.....3564

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

LOCAL RECORDS

13 TAC §7.125.....3565

RAILROAD COMMISSION OF TEXAS

SURFACE MINING AND RECLAMATION DIVISION

16 TAC §§11.71 - 11.74.....3570

16 TAC §11.81, §11.82.....3571

16 TAC §§11.92 - 11.100.....3572

16 TAC §11.113, §11.114.....3574

16 TAC §§11.131 - 11.142.....3575

16 TAC §§11.151 - 11.153.....3579

16 TAC §11.181, §11.182.....3580

16 TAC §11.194.....3580

16 TAC §11.203, §11.206.....3581

16 TAC §§11.131 - 11.139.....3581

TEXAS DEPARTMENT OF LICENSING AND REGULATION

STAFF LEASING SERVICES

16 TAC §§72.24, 72.25, 72.100.....3582

STATE BOARD FOR EDUCATOR CERTIFICATION

ASSIGNMENT OF PUBLIC SCHOOL PERSONNEL

19 TAC §231.1.....3584

ADMINISTRATION

19 TAC §250.1, §250.3.....3586

19 TAC §250.2, §250.3.....3588

19 TAC §250.20.....3588

19 TAC §250.20.....3588

19 TAC §§250.30 - 250.34.....3589

19 TAC §§250.40 - 250.49.....3589

TEXAS BOARD OF NURSING

ADVANCED PRACTICE NURSES

22 TAC §221.1, §221.3.....3590

DEPARTMENT OF STATE HEALTH SERVICES

CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES PROGRAM

25 TAC §§38.1 - 38.16.....3594

25 TAC §38.13.....3616

HEALTH PROFESSIONS REGULATION

25 TAC §140.2, §140.23.....3617

25 TAC §140.103, §140.120.....3618

25 TAC §140.153, §140.169.....3618

25 TAC §140.204, §140.217.....3619

25 TAC §140.277, §140.286.....3620

25 TAC §140.301.....3621

25 TAC §140.377.....3621

25 TAC §140.403, §140.431.....3622

25 TAC §140.504, §140.523.....3622

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

DISPUTE RESOLUTION--BENEFIT REVIEW CONFERENCE

28 TAC §§141.1, 141.2, 141.4, 141.7.....3623

COMPTROLLER OF PUBLIC ACCOUNTS

PROPERTY TAX ADMINISTRATION

34 TAC §9.802.....3629

TEXAS YOUTH COMMISSION

GENERAL PROVISIONS

37 TAC §99.90.....3630

WITHDRAWN RULES

RAILROAD COMMISSION OF TEXAS

SURFACE MINING AND RECLAMATION DIVISION		34 TAC §3.84.....	3650
16 TAC §§11.71 - 11.74.....	3633	PROPERTY TAX ADMINISTRATION	
16 TAC §11.81, §11.82.....	3633	34 TAC §9.803.....	3650
16 TAC §§11.92 - 11.100.....	3633	RULE REVIEW	
16 TAC §11.113, §11.114.....	3633	Proposed Rule Reviews	
16 TAC §§11.131 - 11.139.....	3633	Office of Consumer Credit Commissioner.....	3653
16 TAC §§11.131 - 11.142.....	3634	General Land Office.....	3653
16 TAC §§11.151 - 11.153.....	3634	Texas State Library and Archives Commission.....	3653
16 TAC §11.181, §11.182.....	3634	Adopted Rule Reviews	
16 TAC §11.194.....	3634	State Board for Educator Certification.....	3654
16 TAC §11.203, §11.206.....	3634	TABLES AND GRAPHICS	
ADOPTED RULES		.....3655	
TEXAS ETHICS COMMISSION		IN ADDITION	
REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES		Office of the Attorney General	
1 TAC §20.61.....	3635	Notice of Settlement of a Texas Health and Safety Code and Texas Water Code Action.....	
TEXAS FACILITIES COMMISSION		.....3657	
PROPERTY MANAGEMENT DIVISION		Comptroller of Public Accounts	
1 TAC §§116.1 - 116.8.....	3637	Certification of the Average Taxable Price of Gas and Oil - March 2010.....	
1 TAC §§116.5, 116.9 - 116.11, 116.13.....	3637	.....3657	
1 TAC §§116.20 - 116.28.....	3637	Notice of Availability and Request for Applications.....	
MANDATORY PAPER RECYCLING PROGRAM		.....3657	
1 TAC §§117.1 - 117.7.....	3638	Notice of Contract Award.....	
TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING		.....3658	
TEXAS RESIDENTIAL MORTGAGE LOAN ORIGINATOR REGULATIONS		Notice of Request for Proposals.....	
7 TAC §80.1, §80.2.....	3641	.....3658	
7 TAC §80.8 - 80.11.....	3641	Office of Consumer Credit Commissioner	
7 TAC §§80.12 - 80.14.....	3641	Notice of Rate Ceilings.....	
7 TAC §80.15.....	3641	.....3659	
7 TAC §80.20, §80.21.....	3641	Texas Education Agency	
7 TAC §80.22.....	3642	Request for Applications Concerning Connections Grant.....	
7 TAC §80.23.....	3642	.....3659	
7 TAC §§80.301 - 80.307.....	3643	Texas Commission on Environmental Quality	
TEXAS DEPARTMENT OF INSURANCE		Agreed Orders.....	
TRADE PRACTICES		.....3660	
28 TAC §21.4301.....	3646	Enforcement Orders.....	
COMPTROLLER OF PUBLIC ACCOUNTS		.....3663	
TAX ADMINISTRATION		Enforcement Orders.....	
34 TAC §3.79.....	3649	.....3663	
		Notice of Availability of the Draft April 2010 Update to the Water Quality Management Plan.....	
		.....3667	
		Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions.....	
		.....3668	
		Notice of Opportunity to Comment on Default Order of Administrative Enforcement Actions.....	
		.....3669	
		Notice of Opportunity to Request a Public Meeting for a Municipal Solid Waste Liquid Waste Processing Facility Registration.....	
		.....3669	
		Notice of Water Quality Applications.....	
		.....3670	
		Notice of Water Quality Applications.....	
		.....3671	
		Proposal for Decision.....	
		.....3672	
		Texas Ethics Commission	

List of Late Filers.....	3672	Consultant Contract Award.....	3688
Texas Health and Human Services Commission		Texas Parks and Wildlife Department	
Notice of Proposed Reimbursement Rates	3673	Notice of Proposed Real Estate Transactions	3688
Notice of Public Hearing on Proposed Medicaid Payment Rates..	3674	Public Utility Commission of Texas	
Notice of Public Hearing on Proposed Reimbursement Rates	3674	Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority	3688
Public Hearing Notice for Task Force on Strengthening Nonprofit Capacity.....	3675	Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority	3689
Public Hearing via Videoconference Draft 2011 - 2015 Coordinated Strategic Plan	3676	Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority	3689
Department of State Health Services		Notice of Application for Service Provider Certificate of Operating Authority	3689
Licensing Actions for Radioactive Materials	3676	Notice of Application for Waiver of Denial of Numbering Resources	3689
Notice of Amendment to Texas Schedules of Controlled Substances	3679	Railroad Commission of Texas	
Texas Department of Housing and Community Affairs		Request for Comments on Surface Mining and Reclamation Division Forms	3690
Request for Applications - American Recovery and Reinvestment Act Weatherization Assistance Program	3681	Texas Department of Transportation	
Texas Department of Insurance		Aviation Division - Request for Proposal for Professional Services	3698
Company Licensing	3682	Public Hearing Notice - Statewide Transportation Improvement Program	3699
Third Party Administrator Applications	3682	Public Notice - Aviation.....	3700
Texas Lottery Commission		Texas Water Development Board	
Instant Game Number 1273 "Match & Win™"	3682	Requests for Statements of Qualifications for Water Research	3700
Texas Department of Motor Vehicles			
Public Notice - Deadline Extended for Public Comments.....	3688		
North Central Texas Council of Governments			

Open Meetings

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

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

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

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

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

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

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

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

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

...

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 April 21, 2010

Appointed to the Finance Commission of Texas for a term to expire February 1, 2016, Cynthia F. Lyons of El Paso (reappointed).

Appointed to the Finance Commission of Texas for a term to expire February 1, 2016, Jonathan Newton of Houston (reappointed).

Appointed to the Finance Commission of Texas for a term to expire February 1, 2016, William J. White of Georgetown (reappointed).

Rick Perry, Governor

TRD-201002064



THE ATTORNEY GENERAL

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

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

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

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

Request for Opinion

RQ-0878-GA

Requestor:

The Honorable Jeff Wentworth
Chair, Committee on Jurisprudence
Texas State Senate
Post Office Box 12068
Austin, Texas 78711

Re: Authority of a chief appraiser to grant a tax exemption under section 11.182(b), Tax Code, when the record owner of the property is either a for-profit limited partnership or a limited liability company (RQ-0878-GA)

Briefs requested by May 26, 2010

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

TRD-201002053
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: April 27, 2010



Opinions

Opinion No. GA-0769

The Honorable Geoffrey I. Barr
Comal County Criminal District Attorney
150 North Seguin Avenue, Suite 307
New Braunfels, Texas 78130

Re: Whether a county commissioner has announced his candidacy or become a candidate in fact for election to another office, thereby automatically resigning the office of county commissioner by virtue of article XVI, section 65 of the Texas Constitution (RQ-0836-GA)

S U M M A R Y

The facts as presented in the request do not suggest that the county commissioner has applied for a place on the ballot for another office.

As a result, they do not establish that he has become a candidate in fact under article XVI, section 65 of the Texas Constitution.

The facts presented in the request indicate a pronounced disagreement about the content of statements made and actions taken by the county commissioner as well as the circumstances in which they occurred. Consequently, we cannot determine as a matter of law whether the county commissioner has announced his candidacy for another office, thereby automatically resigning his current office.

Opinion No. GA-0770

The Honorable C. R. (Kit) Bramblett
Hudspeth County Attorney
Post Office Box 221528
El Paso, Texas 79913-1528

Re: Whether a utility company that contracts with a county to collect the fees for the county's solid waste disposal service may suspend its own utility service for nonpayment of the solid waste disposal fee (RQ-0837-GA)

S U M M A R Y

Subsection 364.034(d)(2), Health and Safety Code, authorizes a utility company contracting with a county to collect the fees for the county's solid waste disposal service to suspend its own utility service for nonpayment of the county's solid waste disposal fee.

Opinion No. GA-0771

The Honorable Charlie Geren
Chair, Committee on House Administration
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Application of Local Government Code section 143.014(c) to municipalities that have adopted chapter 174 of the Local Government Code, the Fire and Police Employee Relations Act; reconsideration of Attorney General Opinion GA-0662 (2008) (RQ-0840-GA)

S U M M A R Y

When a municipality that is subject to the Fire Fighter and Police Officer Civil Service Act adopts Local Government Code chapter 174, the Fire and Police Employee Relations Act, subsection 143.014(c), limiting the number of deputies who may be appointed, becomes in-

applicable to the municipality. These limits may be reimposed if the municipality specifically adopts them through the collective bargaining process. Attorney General Opinion GA-0662 (2008) is affirmed in relevant part.

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

TRD-201002054

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: April 27, 2010



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinions

EAO-489. Whether, in light of the United States Supreme Court ruling in *Citizens United v. Federal Election Commission*, the Texas Ethics Commission can enforce the prohibition on direct campaign expenditures, whether the Texas Ethics Commission can enforce the requirements to include certain disclosures on political advertising, and whether disclosure of certain direct campaign expenditures is required. (SP-10 Revised)

SUMMARY

For the reasons stated in this opinion, the Texas Ethics Commission cannot enforce §253.094 or §253.002 of the Election Code to prohibit a corporation or labor organization from making a direct campaign expenditure. In addition, the Texas Ethics Commission cannot enforce §253.002 of the Election Code to prohibit a person from making a direct campaign expenditure. *Citizens United* does not, however, impede us from continuing to enforce the restrictions on corporations or labor organizations making political contributions to candidates or officeholders. Furthermore, *Citizens United* does not impede us from continuing to enforce the political advertising disclosure requirements under chapter 255 of the Election Code. In addition, title 15 requires a corporation, labor organization, or other person that makes one or more direct campaign expenditures from its own property in connection with an election of a candidate to comply with the reporting requirements that apply to an individual as set out in §253.062 of the Election Code.

EAO-490. Whether a communication relating to a measure that a city is considering using public funds to publish complies with §255.003 of the Election Code. (AOR-553)

SUMMARY

For purposes of §255.003 of the Election Code, the pamphlet is not "political advertising" and, therefore, public funds may be used to publish it unless an officer or employee of the city authorizing such use of public funds knows that the pamphlet contains false information. The pamphlet may be viewed at http://www.ethics.state.tx.us/opinions/EAO_490_appendix.pdf on the Texas Ethics Commission website.

EAO-491. Whether an advertisement supporting or opposing a candidate that is paid for by a political committee and that appears on an

Internet social networking website is required to include a political advertising disclosure statement if the social networking website limits the amount of space or number of characters or text that can be used in the advertisement. (AOR-554)

SUMMARY

The advertisement proposed by the requestor of this advisory opinion may comply with the disclosure requirement under §255.001(a) of the Election Code if either: 1) the full disclosure statement appears on the face of the advertisement or, in the alternative, 2) a direct link to another Internet landing page that displays the full disclosure statement appears on the face of the advertisement and the direct link contains the words "political advertising," "pol ad," or another recognizable abbreviation. (In other words, the link must take the Internet user directly to the page that contains the full disclosure statement.) If the advertisement includes a direct link in order to comply with the disclosure requirement, the Internet landing page to which the direct link refers must be operational and freely accessible during the time the advertisement is visible on the social networking website.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201001989
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: April 22, 2010



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS

SUBCHAPTER C. INVESTIGATION AND

PRELIMINARY REVIEW

1 TAC §12.81

The Texas Ethics Commission proposes new §12.81, relating to the procedures for investigating and resolving technical and clerical violations of laws within the Commission's jurisdiction as provided by §571.0631 of the Government Code.

Section 12.81 describes procedures used for investigating and resolving technical and clerical violations of laws within the Commission's jurisdiction.

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

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

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

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

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The new §12.81 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The new §12.81 affects §571.0631 of the Government Code.

§12.81. Technical, Clerical, or De Minimis Violations.

(a) A technical, clerical, or de minimis violation for purposes of §571.0631 of the Government Code, may include a first-time violation by a respondent for:

(1) Typographical or incomplete information on a campaign finance report that is not misleading or does not substantially affect disclosure;

(2) Failure to include a disclosure statement on political advertising;

(3) Failure of a non-incumbent to use the word "for" in a campaign communication, where the communication is not otherwise misleading;

(4) Failure to include the highway right-of-way notice on political advertising;

(5) Filing a late campaign finance report if the total amount of political contributions does not exceed \$4,000, the total amount of political expenditures does not exceed \$4,000, and the report is not a report due 30 or 8 days before an election, or a special pre-election report;

(6) Filing an incomplete campaign finance report if the total amount of political contributions misreported does not exceed \$4,000, the total amount of political expenditures misreported does not exceed \$4,000, and the report is not a report due 30 or 8 days before an election, or a special pre-election report; or

(7) Filing a corrected campaign finance report if the total amount of political contributions corrected does not exceed \$4,000, the total amount of political expenditures corrected does not exceed \$4,000, and the report is not a report due 30 or 8 days before an election, or a special pre-election report; or

(8) Failure to timely file a campaign treasurer appointment, if before filing the campaign treasurer appointment, the total amount of political contributions accepted does not exceed \$4,000 and the total amount of political expenditures made or authorized does not exceed \$4,000.

(b) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government Code, if the commission determines that the only alleged violations are technical, clerical, or de minimis, the commission may enter into an assurance of voluntary compliance with the respondent. Before entering into an assurance of voluntary compliance, the commission may require a respondent to correct the violations.

(c) An assurance of voluntary compliance is confidential under §571.140 of the Government Code.

(d) An assurance of voluntary compliance may include a penalty not to exceed \$500.

(e) The executive director may resolve a sworn complaint as provided under this section.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201002005

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: June 6, 2010

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



PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 167. DISPUTE RESOLUTION PROCESSES APPLICABLE TO CERTAIN CONSUMER HEALTH BENEFIT DISPUTES

The State Office of Administrative Hearings (SOAH) proposes new Chapter 167 concerning Dispute Resolution Processes Applicable to Certain Consumer Health Benefit Disputes. The new chapter is being proposed to establish procedures for the appointment of mediators and special judges to conduct dispute resolution proceedings prescribed by Insurance Code, Chapter 1467, added by the 81st Legislative Session, under H.B. 2256, effective June 19, 2009. The new chapter will consist of Subchapter A, §167.1 and §167.3; Subchapter B, §167.51; Subchapter C, §§167.101, 167.103, 167.105, 167.107, and 167.109; Subchapter D, §167.151; and Subchapter E, §§167.201, 167.203, 167.205, 167.207, and 167.209.

Subchapter A - General, §167.1 sets forth the purpose and scope for the new chapter; and §167.3 provides the definitions of words and terms used in the new chapter in addition to definitions contained in Insurance Code, §1467.001. Subchapter B - Initiating Appointment of a Mediator, §167.51 provides which forms the Texas Department of Insurance shall file with SOAH to initiate the appointment of a mediator. Subchapter C - Mediator, §167.101 identifies the requirements for appointment as a mediator by SOAH, and the procedures the parties must follow when choosing a person other than a mediator appointed by SOAH; §167.103 sets forth how the mediator roster will be compiled, posted, and maintained by SOAH, how the mediators will be grouped and listed on the roster, and what must be filed by a mediator who wishes to be appointed; §167.105 sets forth when the roster will be updated, how a mediator may be withdrawn or removed from the roster, and specifies that mediators are responsible for fees and payments from parties; §167.107 provides the guidelines SOAH will use to determine which mediator will be appointed based on the geographic region of where the mediation will be held; and §167.109 identifies the duties and responsibilities of the mediator. Subchapter D - Post Mediation Reports, §167.151 sets forth the timeline for the mediator to submit reports after the conclusion of the mediation, identifies to whom the reports must be sent, and includes the required content of the reports following successful and unsuccessful mediations. Subchapter E - Special Judges, §167.201 identifies the required qualifications of special judges; §167.203 sets forth

the guidelines to be followed by the Chief Judge for entering an order of referral to a special judge and the required content of the order of referral upon receiving a report of an unsuccessful mediation; §167.205 sets forth how the special judge roster will be compiled, posted, and maintained by SOAH, identifies the qualifications for special judges under this chapter, and specifies the information a special judge must submit in order to be placed on the roster; §167.207 provides the guidelines the Chief Judge or the Chief Judge's designee will use to appoint special judges; and §167.209 sets forth when the roster will be updated, how a special judge will be withdrawn, or request to be withdrawn from the roster, and specifies that special judges are responsible for fees and payments from parties.

Kerry D. Sullivan, General Counsel, has determined that for the first five-year period the new chapter is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering it.

Mr. Sullivan also has determined that for the first five-year period the new chapter is in effect the public benefit anticipated as a result of the new chapter will be in providing notice to the participants, including mediators and special judges, of the procedures for requesting and participating in proceedings covered by the chapter. There will be no effect on small businesses as a result of enforcing the new chapter. The proposed new chapter would have no fiscal impact on small businesses, and there is no anticipated economic cost to individuals who are required to comply with the new chapter.

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

SUBCHAPTER A. GENERAL

1 TAC §167.1, §167.3

The new chapter is proposed under Insurance Code, Chapter 1467, §1467.003, which requires SOAH to adopt rules as necessary to implement its respective powers and duties under this chapter, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The new chapter affects the Government Code, Chapters 2001 and 2003, and Insurance Code, Chapter 1467.

§167.1. Purpose and Scope.

(a) This chapter governs the procedures of the State Office of Administrative Hearings concerning the appointment of mediators and special judges to conduct dispute resolution proceedings prescribed by Insurance Code, Chapter 1467.

(b) These rules shall be construed to ensure the fair and expeditious resolution of claims brought under Insurance Code, Chapter 1467.

§167.3. Definitions.

The definitions contained in Insurance Code, §1467.001 shall apply in addition to the definitions set forth below.

(1) Chief Judge--The chief administrative law judge of SOAH.

(2) Out-of-Network Benefit Mediation Request--The completed form described in and available at <http://www.tdi.state.tx.us/consumer/documents/mediationform.pdf>.

(3) SOAH--The State Office of Administrative Hearings.

(4) Special Judge--A person having the qualifications prescribed in Texas Civil Practice & Remedies Code, Chapter 151.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201002006

Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER B. INITIATING APPOINTMENT OF A MEDIATOR

1 TAC §167.51

The new chapter is proposed under Insurance Code, Chapter 1467, §1467.003, which requires SOAH to adopt rules as necessary to implement its respective powers and duties under this chapter, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The new chapter affects the Government Code, Chapters 2001 and 2003, and Insurance Code, Chapter 1467.

§167.51. Forms.

In order to initiate the appointment of a mediator through SOAH, the Texas Department of Insurance shall file with SOAH a completed Request to Docket Case form and a copy of the enrollee's Out-of-Network Benefit Mediation Request form.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201002007

Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER C. MEDIATOR

1 TAC §§167.101, 167.103, 167.105, 167.107, 167.109

The new chapter is proposed under Insurance Code, Chapter 1467, §1467.003, which requires SOAH to adopt rules as necessary to implement its respective powers and duties under this chapter, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The new chapter affects the Government Code, Chapters 2001 and 2003, and Insurance Code, Chapter 1467.

§167.101. Mediator Qualifications.

(a) Any mediator appointed by SOAH shall have the qualifications prescribed by Insurance Code, §1467.052.

(b) Notwithstanding subsection (a) of this section, a person other than a mediator appointed by SOAH may conduct mediation under this chapter on agreement of all parties and notice to the Chief Judge or her designee.

§167.103. Roster of Mediators.

(a) SOAH shall compile and maintain a roster of mediators qualified to serve under Insurance Code, §1467.052. The roster shall be posted on SOAH's public website at www.soah.state.tx.us.

(b) The mediators listed on the roster shall be grouped according to the geographic region in which the mediator's mailing address is located. For purposes of grouping mediators by region, SOAH shall use the judicial administrative regions described in Government Code §74.042.

(c) The mediators shall be listed on the roster in alphabetical order within each geographic region.

(d) Mediators qualified under Insurance Code, §1467.052 who wish to be appointed under this chapter shall submit the following:

(1) A letter of interest containing the mediator's:

(A) name;

(B) mailing address;

(C) email address;

(D) telephone number; and

(E) facsimile number.

(2) A statement of qualifications under Insurance Code, §1467.052. The statement shall be submitted in accordance with the information posted on SOAH's public website.

§167.105. Mediator Roster Update, Withdrawal, and Fee Arrangements.

(a) The roster of mediators will be updated on January 1 and July 1 of each year. Mediators may send letters of interest and qualification statements described in §167.103(d) of this title (relating to Roster of Mediators) at any time, but they must be received by SOAH by June 15 or December 15 of each year to be included on the next updated roster. Once placed on the roster, the mediator's name shall remain there until the mediator withdraws or the Chief Judge determines the mediator is not qualified under Insurance Code, §1467.052.

(b) Mediators may withdraw from the roster at any time. Withdrawals must be in writing and filed with SOAH.

(c) Mediators shall be solely responsible for fee arrangements with and payments from parties.

§167.107. Appointment of a Mediator.

(a) Unless the parties have provided notice to the Chief Judge or her designee that they have agreed to retain a mediator who meets the qualifications set forth in Insurance Code, §1467.054, the Chief Judge or her designee shall appoint a mediator from the roster of qualified mediators maintained by SOAH. Whenever practicable, the mediator shall be chosen randomly from the group of mediators located within the geographic region in which the mediation will be held.

(b) If no mediator is on the roster or available from the geographic region that includes the county in which the mediation must

be held pursuant to Insurance Code, §1467.052, SOAH shall appoint a mediator who is willing to travel from another geographic region to the county in which the mediation must be held.

§167.109. Mediator Duties and Responsibilities.

A mediator selected by the parties or appointed by SOAH under this chapter shall perform the functions prescribed in Insurance Code, Chapter 1467.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201002008

Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER D. POST MEDIATION REPORTS

1 TAC §167.151

The new chapter is proposed under Insurance Code, Chapter 1467, §1467.003, which requires SOAH to adopt rules as necessary to implement its respective powers and duties under this chapter, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The new chapter affects the Government Code, Chapters 2001 and 2003, and Insurance Code, Chapter 1467.

§167.151. Mediator's Reports Following Mediation.

(a) Within five days after the conclusion of mediation, the mediator shall submit to the Chief Judge, the Texas Department of Insurance, and the Texas Medical Board one of the following:

(1) if the mediation was successful, a report indicating that the parties resolved their dispute in mediation; or

(2) if the mediation was unsuccessful, the report prescribed in Insurance Code, §1467.057.

(b) If mediation was unsuccessful, the mediator shall include in the report to the Chief Judge the following information:

(1) the issues to be referred to a special judge;

(2) the name of the special judge, if any, on which the parties have agreed or a statement advising that the Chief Judge should appoint a special judge;

(3) a certification that the parties have waived their right to trial by jury.

(c) The mediator shall not file the report required in Insurance Code, §1467.101 with SOAH.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201002009

Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER E. SPECIAL JUDGES

1 TAC §§167.201, 167.203, 167.205, 167.207, 167.209

The new chapter is proposed under Insurance Code, Chapter 1467, §1467.003, which requires SOAH to adopt rules as necessary to implement its respective powers and duties under this chapter, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The new chapter affects the Government Code, Chapters 2001 and 2003, and Insurance Code, Chapter 1467.

§167.201. Special Judge Qualifications.

The special judge shall have the qualifications prescribed in Texas Civil Practice and Remedies Code, Chapter 151.

§167.203. Order of Referral to Special Judge.

(a) Upon receiving the report of an unsuccessful mediation, the Chief Judge shall enter an order of referral of the matter to a special judge.

(b) The order of referral shall:

(1) name the special judge on whom the parties agreed, or if the parties did not agree on a judge, appoint a special judge;

(2) state the issues to be referred;

(3) set out the time and place on which the parties agree for the trial;

(4) require each party to pay the party's proportionate share of the special judge's fee; and

(5) certify that the parties have waived the right to trial by jury. If either party fails or declines to provide a written waiver within seven days after the Chief Judge or the Chief Judge's designee requests them to do so, the referral shall not be made.

§167.205. Roster of Special Judges.

(a) SOAH shall compile and maintain a roster of special judges qualified to accept referrals under this chapter. The roster will be posted on SOAH's website at www.soah.state.tx.us.

(b) Special judges qualified under Texas Civil Practice and Remedies Code, Chapter 151 and who want to be selected or appointed under this chapter shall send to the Chief Judge the following:

(1) A letter of interest containing the special judge's:

(A) name;

(B) mailing address;

(C) email address;

(D) telephone number; and

(E) facsimile number.

(2) A statement of qualification under Texas Civil Practice and Remedies Code, Chapter 151. The statement of interest shall be submitted in accordance with the information provided on SOAH's public website.

(c) The roster of special judges shall be divided according to the judicial administrative regions described in Government Code, §74.042.

(d) The special judges shall be listed on the roster in alphabetical order within each judicial administrative region.

(e) The Chief Judge shall refer a case to a special judge in the judicial administrative region from which the unsuccessful mediation arose.

§167.207. Appointment of Special Judge.

(a) The Chief Judge shall appoint special judges in alphabetical order and shall proceed through the list in that order. If a special judge declines appointment, the Chief Judge shall proceed to the next special judge on the roster. When the end of the list is reached, the Chief Judge will begin again in alphabetical order from the top of the list.

(b) If no special judge is on the roster or available for the judicial administrative region from which the unsuccessful mediation arose, the Chief Judge shall appoint a special judge from an adjoining region.

(c) If no special judge is available in an adjoining region, the Chief Judge shall appoint a special judge from the nearest region in which a special judge is available.

§167.209. Special Judge Roster Update, Withdrawal, and Fee Arrangements.

(a) The roster of special judges will be updated on January 1 and July 1 of each year. Special judges may send letters of interest and qualification statements described in §167.205 of this title (relating to Roster of Special Judges) at any time, but they must be received by SOAH by June 15 or December 15 of each year in order to be on the next updated roster. Once placed on the roster, a special judge shall remain there until the special judge withdraws or the Chief Judge determines the special judge is not qualified under Texas Civil Practice and Remedies Code, Chapter 151.

(b) Special judges may withdraw from the roster at any time. Withdrawals must be in writing and filed with SOAH.

(c) Special judges shall be solely responsible for fee arrangements with and payments from parties.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201002010

Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

Earliest possible date of adoption: June 6, 2010

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



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS

SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 13 TAC §7.125 are not included in the print version of the Texas Register. The figures are available in the on-line version of the May 7, 2010, issue of the Texas Register.)

The Texas State Library and Archives Commission proposes to amend §7.125 regarding local government retention schedules for the records of Public School Districts (SD), Public Junior Colleges (JC), County Clerks (CC), and District Clerks (DC) pursuant to the Government Code, §441.158(a). The amendments are being proposed to update these retention schedules.

Jan Ferrari, director, State and Local Records, has determined that for each year of the first five years after the amended section is in effect, there will be no fiscal implications for state or local governments as a result of administering or enforcing the section. Ms. Ferrari does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed amended rules.

Ms. Ferrari has also determined the public benefit of the proposed amended rule is that the amended schedules will help to provide better management of records by improving retention of public records. There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the rules.

Written comments on the proposed rules may be submitted to Nanette Pfiester, Program Planning and Research Specialist, P.O. Box 12927, Austin, TX 78711; by fax to (512) 421-7224; or by email to nanette.pfiester@tsl.state.tx.us.

The amended section is proposed under Government Code §441.158 that grants authority to the Texas State Library and Archives Commission to provide records retention schedules to local governments and §441.160 that allows the commission to revise the schedules.

The proposed amendment affects the Government Code, §441.158 and §441.160.

§7.125. Records Retention Schedules.

(a) The following records retention schedules, required to be adopted by rule under the Government Code, §441.158(a), are adopted by reference. Copies of the schedules are available from the State and Local Records Management Division, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927; (512) 421-7200 [452-9242].

(1) Local Schedule LC: Records of Justice and Municipal Courts.

(2) Local Schedule TX: Records of Property Taxation, 2nd Edition.

(3) Local Schedule EL: Records of Elections and Voter Registration.

[(4) Local Schedule SD: Records of Public School Districts.]

[(5) Local Schedule JC: Records of Public Junior Colleges.]

(4) [(6)] Local Schedule HR: Records of Public Health Agencies.

(5) [(7)] Local Schedule UT: Records of Utility Services.

(b) The following records retention schedules, required to be adopted by rule under the Government Code, §441.158(a), are adopted.

(1) Local Schedule GR: Records Common to All Local Governments, 3rd Edition.

Figure: 13 TAC §7.125(b)(1) (No change.)

(2) Local Schedule PW: Records of Public Works and Services.

Figure: 13 TAC §7.125(b)(2) (No change.)

(3) Local Schedule CC: Records of County Clerks, 3rd [~~2nd~~] Edition.

Figure: 13 TAC §7.125(b)(3)

(4) Local Schedule DC: Records of District Clerks, 3rd [~~2nd~~] Edition.

Figure: 13 TAC §7.125(b)(4)

(5) Local Schedule PS: Records of Public Safety Agencies, 2nd Edition.

Figure: 13 TAC §7.125(b)(5) (No change.)

(6) Local Schedule SD: Records of Public School Districts, 2nd Edition.

Figure: 13 TAC §7.125(b)(6)

(7) Local Schedule JC: Records of Public Junior Colleges, 2nd Edition.

Figure: 13 TAC §7.125(b)(7)

(c) The retention periods in the records retention schedules adopted under subsections (a) and (b) of this section serve to amend and replace the retention periods in all editions of the county records manual published by the commission between 1978 and 1988. The retention periods in the manual, which were validated and continued in effect by the Government Code, §441.159, until amended, are now without effect.

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

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002016

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: June 6, 2010

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



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 11. SURFACE MINING AND RECLAMATION DIVISION

SUBCHAPTER C. SUBSTANTIVE RULES--URANIUM EXPLORATION AND SURFACE MINING

The Railroad Commission of Texas withdraws the proposal published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7730) and proposes amendments to §11.71 and §11.72, relating to Purpose and Authority; and Applicability; new §11.73 and §11.74, relating to Uranium Exploration Forms; and Information Subject to Public Review; amendments to §11.81 and §11.82, relating to Statutory Definitions; and Regulatory Definitions; amendments to §§11.92 - 11.100, relating to Permit Application; Elements of Permit Application; Application Approval; Bonding, Insurance, Payment of Fees; Permit Issuance; Renewal; Transfer; Permit Approval; and Permit Denial; amendments to §11.113 and §11.114, relating to Revocation or Suspension without Consent and Revision on Motion or with Consent; and new rules §§11.131 - 11.142, relating to Uranium Exploration Permit: General Provisions; Application to Conduct Uranium Exploration Activity; Uranium Exploration Permit Revision; Uranium Exploration Permit Renewal; Uranium Exploration Permit Transfer; Uranium Exploration Permit Fees; Commission Notice of Uranium Exploration Permit Application, Issuance, and Denial; Uranium Exploration Drill Site Operating and Reclamation Requirements; Uranium Exploration Drill Site Plugging and Reporting Requirements; Commission and Groundwater Conservation District Jurisdiction; Groundwater Quality and Well Information; and Groundwater Analysis and Reporting; amendments to §§11.151 - 11.153, relating to Plan; Standards; and Alternative Methods; amendments to §11.181 and §11.182, relating to Closing, and Release; amendments to §11.194, relating to Release from Reporting Requirement; amendments to §11.203, relating to Duration of Liability; and amendments to §11.206, relating to Release or Reduction of Bonds. The Commission is publishing a new proposal that incorporates revisions based on some of the comments the Commission received on the version of the proposed rules published in the *Texas Register* on November 6, 2009.

In a separate, concurrent rulemaking, the Commission proposes the repeal of §§11.131 - 11.139, relating to Notice of Exploration through Overburden Removal; Content of Notice; Extraction of Minerals; Removal of Minerals; Lands Unsuitable for Surface Mining; Notice of Exploration Involving Hole Drilling; Permit; Reclamation and Plugging Requirements; and Reporting, in order to propose the corresponding new rules §§11.131 - 11.142 mentioned above.

In §11.71, the Commission proposes to add the words "exploration," "explored lands," and "exploration activity," and in §11.72, to add the words "uranium exploration activity" and "uranium exploration permit" pursuant to the expanded statutory authority to regulate uranium exploration enacted by House Bill 3837, 80th Legislature (2007).

The Commission proposes new §11.73 to specify the forms required to be filed with the Commission for various purposes. The form numbers, names, creation or revision dates, and the applicable rule numbers are listed in the table. To amend a form, create a new form, or to stop using a current form, the Commission would be required to give notice as a rulemaking proceeding, which would include notice and an opportunity for interested persons to comment.

The Commission proposes new §11.74 to establish that all information filed by an applicant or permittee is considered essential for public review unless the applicant or permittee identifies specific information to be confidential and the director determines whether it is or is not essential for public review. This rule

largely mirrors the language in Texas Natural Resources Code, §131.048.

In §11.81, the Commission proposes amendments to the definitions of "party to the administrative proceedings," the deletion of the definition of "person affected," and amendments to the definition of "surface mining operation." One comment on the November 6, 2009, proposal suggested that the definition of "person affected" not be deleted. The Commission continues to propose deletion of this definition in §11.81 because the term is already defined in the Act at §131.004(11). Another comment suggested that the definition of "reclamation" should include a specific reference to exploration activities. The Commission agrees that this distinction should be included, and is proposing a definition for a new term, "exploration reclamation," in §11.82 to clarify the matter.

In §11.81(14), the Commission proposes wording in the definition of "surface mining permit" to clarify that a uranium surface mining permit does not include a discharge permit issued by the Commission pursuant to the Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131, Subchapter H, or a uranium exploration permit issued by the Commission pursuant to this chapter. Similar changes are proposed in §11.82(16) for the definition of "uranium exploration permit."

In §11.82, the Commission proposes an amendment to the definition of "Act," and proposes new definitions for "APA," "applicant," "director," "division," "drilling completion," "examiner," "exploration borehole," "exploration reclamation," "permit," "uranium exploration permit," "well," and "well completion." The proposed definitions for "APA," "applicant," "director," "division," "examiner," "well," and "well completion" clarify terms that are used in the chapter. The proposed definitions for "exploration borehole," "permittee," and "uranium exploration permit" clarify terms used in HB 3837.

For §§11.92 - 11.100, the Commission proposes minor changes to the rule titles to clarify that these rules apply to surface mining activities; in §11.93 and §11.94, the Commission also proposes an increase in the initial application fee from \$200 to \$400. In §11.100, the Commission proposes wording to correct the name of a state agency.

The Commission proposes minor changes in §11.113 and §11.114 to correct references to other rules and to delete obsolete language for greater clarity.

The Commission proposes the repeal of §§11.131 - 11.139 in a separate, concurrent rulemaking and here proposes the corresponding new rules §§11.131 - 11.142 to implement the new statutory provisions enacted by HB 3837. Proposed new §11.131 sets forth the requirement to obtain a permit for uranium exploration prior to conducting such activity, outlines the scope of such permit, including a general description of the purposes and authority granted by a permit, and mirrors language enacted by HB 3837. This section also establishes the permit term for exploration and the requirements for permit renewal until certain activities are completed.

Each applicant for a uranium exploration permit must comply with proposed new §11.132 by filing Form SMRD-3U, specifically including information regarding the applicant, the names and addresses of each entity that the Commission is required to notify under proposed new §11.137 in this rulemaking. Proposed new §11.132 also requires a map or maps of the area of proposed exploration and a list of permit-area surface owners

and mineral owners that specifically identifies those mineral owners from whom right of entry to conduct exploration activities has been obtained. In addition, sufficient geologic and hydrologic information for the proposed area of exploration must be included to support the proposed plan for borehole plugging and well installation. Two comments on the November 6, 2009, proposed rules suggested that the distance outside the exploration permit boundary in proposed §11.132(b)(6)(C) be reduced from 1,000 feet to 150 feet, to be consistent with the protection requirements for drilling within 150 feet of private wells. The Commission proposes a distance of 150 feet in these proposed rules. Two comments on proposed new §11.132(b)(7)(C) recommended that the requirement to provide an estimate of the number of exploration boreholes to be drilled during the permit term was too speculative to be of reasonable use and that the requirement should be deleted. The Commission agrees and has proposed a revised subparagraph. This change is also included in proposed rule §11.137(c)(4). In addition, two comments recommended that the Commission define who constitutes an "authorized representative" in §11.132(c). For clarity, the Commission proposes to include the phrase "applicant's authorized representative" in proposed §11.132(b)(2).

Proposed new §§11.133, 11.134, and 11.135 establish the minimum requirements, respectively, for the content of applications for revision, renewal, and transfer of exploration permits. Applicants for revision or renewal must file Form SMRD-3U describing any changes to the exploration activity, and permittees requesting a transfer must file Form SMRD-5U.

Proposed new §11.136 pertains to uranium exploration permit fees. An initial application fee for uranium exploration consists of an amount equal to \$1.50 per acre for each acre included within the proposed exploration area identified on a map as part of the application plus \$50 for each exploration borehole drilled during the twelve-month permit term. An application for a permit amendment that proposes additional exploration area must be accompanied by the appropriate fee of \$1.50 per acre for each additional acre. Permit amendment fees will not be prorated. Permit renewal applications must be accompanied by a permit renewal application fee calculated on the same basis for acres and number of boreholes. Permit transfer applications require a \$500 nonrefundable fee. Subsection (e) requires these fees to be paid with the submission of the monthly borehole plugging reports (Forms SMRD-38U or SMRD-39U).

Proposed new §11.137 establishes the Commission's requirements for notifying certain entities in the area of proposed activity for a new exploration permit, revision, renewal, or transfer. These entities, to be identified by name and address in the permit application, pursuant to proposed new §11.132, include the local groundwater conservation district, if present, the mayor and health authority of each municipality in the locality, the county judge and county health authority of each county in which the proposed exploration is to occur, and each member of the Texas legislature representing the area in which the proposed exploration is to occur. One comment on the November 6, 2009, proposed rules suggested that this rule make clear that notices required under §11.137 will be provided concurrently to all entities. The Commission agrees with this suggestion and has included the requirement in this proposal.

Proposed new §11.138 sets forth the drill site operating and reclamation requirements for uranium exploration. No permittee may drill an exploration borehole within 150 horizontal feet of an existing water well without the written consent of the well owner.

The rule further sets out a permittee's duty to protect the drill site and ensure that reclamation occurs as contemporaneously as practicable. The permittee must notify the division prior to certain activities to allow scheduling of inspections.

Proposed new §11.139 establishes technical requirements for borehole plugging, marking, and reporting, including acceptable plugging materials and methodology, a reasonable time frame for effecting the plugging of exploration boreholes, and requirements for marking plugged holes in the field to facilitate inspection following plugging. Proposed subsections (e) and (g) require a monthly report of plugging (on Form SMRD-39U or SMRD-38U).

Proposed new §11.140 addresses ground water quality pursuant to HB 3837 and specifies the Commission's jurisdiction over uranium exploration boreholes and cased exploration wells, and requires a permittee to register cased exploration wells with the Texas Commission on Environmental Quality pursuant to its rule at 30 TAC §331.221 (relating to Registration of Wells). Certain wells are subject to the requirements of groundwater conservation districts. The proposed new rule also requires permittees to file monthly reports with the Commission and the applicable groundwater conservation districts reporting the total amount of water produced from certain wells.

Proposed new §11.141 requires permittees to obtain groundwater samples for analysis at least 15 days prior to commencement of drilling. Within 90 days of receiving the laboratory analysis, the applicant must provide the pre-exploration groundwater quality information to the groundwater conservation district. Proposed new §11.142 requires groundwater quality analysis according to the specified groundwater monitoring parameters. Permittees must report the analyses to the Commission and the groundwater conservation districts. One comment on the November 6, 2009, proposal suggested that vanadium (V) be included as a parameter that should be analyzed in ground waters in permit-area wells. The available literature on minerals and elements that frequently occur in Texas uranium provinces supports this suggestion. The Commission proposes to include vanadium as a required analyte.

Finally, the Commission proposes amendments to §§11.151, 11.152, 11.153, 11.181, 11.182, 11.194, 11.203, and 11.206 to correct statutory citations and cross-references to other rules and to make other non-substantive clarifications.

John Caudle, Director, Surface Mining and Reclamation Division, has determined that during each year of the first five years the proposed amendments and new rules would be in effect, the net fiscal effect on state government will be minimal if not zero, because the anticipated program costs match closely with anticipated revenue resulting from the proposed fee structure. Program costs for the Commission to implement the regulatory program established in HB 3837 result from continued staffing needs that require a minimum of two full-time employees, one each for uranium exploration permit review and for site inspection activities, plus operating expenses to conduct the necessary inspections. The proposed fees for exploration permitting specified in proposed new §11.136 are set at an amount that the Commission anticipates will recover the costs of the regulatory program, consistent with Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to

assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

The purpose of the proposed amendments and new rules is to clarify several existing rules and to promulgate more comprehensive rules regarding uranium exploration by drillhole pursuant to the expanded statutory authority enacted in HB 3837. The Commission does not anticipate that the amendments will result in either an increase or decrease in the total number of uranium exploration permit applications filed with the Commission. There will be no fiscal impact on local governments.

Mr. Caudle has determined that for each year of the first five years that the proposed amendments and new rules will be in effect, the public benefit will be a fee structure for uranium exploration activities that aligns the fees paid by the uranium exploration and mining industry with the costs incurred by the Commission to implement the regulatory program established in HB 3837. In addition, the proposed amendments and new rules provide a more comprehensive regulatory program that is easier to understand and comply with. In addition, Mr. Caudle has determined that for each year of the first five years the proposed amendments and new rules will be in effect, the probable increase in the economic cost of compliance to the uranium industry as a whole would be a total of \$153,750. This amount is based on the Commission's estimated manpower needs and is derived from a proposed annual fee of \$1.50 per permit acre and a fee of \$50 for each exploration borehole drilled during the annual permit term. Mr. Caudle estimates an average of 15 initial or permit renewal applications per year with an average of 3,500 acres and 100 boreholes per permit, yielding estimated revenue of \$153,750 per year.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce that effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted. Before adopting a rule that may have an adverse economic effect on small businesses, a state agency first must prepare an economic impact statement that estimates the number of small businesses subject to the proposed rule, projects the economic impact of the rule on small businesses, and describes alternative methods of achieving the purpose of the proposed rule. The Commission's proposed amendments and new rules in Chapter 11 are anticipated to have a potential impact on those companies that perform uranium exploration in Texas. No permits have been issued for surface uranium mining since 1993.

Texas Government Code, §2006.001(2), defines a "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. Texas Government Code, §2006.001(1), defines "micro-business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has not more than 20 employees. Uranium exploration and mining companies are not required to make filings with the Commission reporting the number of employees or annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, 2006.001. Information available to the Commission indicates that the uranium

exploration and mining companies operating in Texas have at least 100 employees or are companies under common control of larger companies and, therefore, do not meet two of the three elements of either definition; however, the Commission cannot conclusively determine whether any current permittee is a small business or micro-business, as those terms are defined.

The North American Industrial Classification System (NAICS) sets forth categories of business types, and the appropriate category for uranium exploration and mining is 212291 (Uranium-Radium-Vanadium Ore Mining). In the Texas NAICS on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses," this category is not delineated. The most suitable category on that website is business type 212 (Mining, except oil and gas), for which there are listed 281 companies in Texas. This source further indicates that 227 companies (81 percent) are small businesses or micro-businesses as defined in Texas Government Code, §2006.002. No further breakdown is provided with respect to the relative size of the companies.

All of the exploration permits the Commission has issued since 2005 are or were held by just seven companies. The Commission does not expect this scale of activities to change appreciably in the future. The Commission has determined that, based on available data, one of these seven companies that currently would be affected by the proposed rules may meet the requirements for classification as a small business or micro-business as those terms are defined in Texas Government Code, §2006.001. Based on comments received from the Commission's previous notice of proposed rulemaking, the Commission has determined that it should adopt a conservative approach and prepare an economic impact statement that addresses the economic costs of compliance, assuming that one or more of the companies that currently are conducting exploration or that another company which may desire to conduct exploration meets these requirements.

The Commission's experience with uranium permitting under the current rules indicates that the larger companies have held several permits of a large total acreage (several thousand to tens of thousands of acres), whereas the subsidiary companies under common control of a larger company have generally conducted exploration on known prospects of a smaller size, ranging from about 200 to 1,200 acres. The proposed fee structure is based on the areal extent of the permit and the number of holes drilled, factors that would both tend to greatly reduce the likely actual permit-fee costs for the smaller businesses and modestly increase the actual permit-fee costs for the largest businesses. The Commission is not proposing a flat fee for each permit. None of these factors, however, is anticipated to significantly affect company decisions regarding the number and depth of the holes drilled. Other factors that might affect an assessment of the economic burden of regulating uranium exploration, such as net value of the mineral resource in the average explored area, cannot be directly assessed because this information is neither reported nor otherwise available to the Commission.

Irrespective of the non-availability of data on the structure of the corporate entities, the Commission hypothetically estimates that a permittee holding five permits with a cumulative total permit area as large as 500,000 acres would annually drill a total of 100 boreholes in each permit. Under this scenario, the required permitting would result in an annual cost to the permittee of \$775,000, based on the proposed fee structure. The Commission considers such a scenario is unlikely, however, because

under the current regulatory framework, permit area sizes are greatly inflated beyond the area that the permittee has already or expects to actually conduct exploration activities. The Commission's current regulations provide no incentive to reduce the area to that which is reasonably necessary to conduct the intended activities. The Commission has determined that a more likely scenario would be that a permittee might hold as many as five permits averaging 3,500 acres each, and annually might drill an average of 100 boreholes in each permit. In this scenario, the required permitting would cost the permittee \$51,250 annually.

The Commission also has determined that permit holders may incur some initial costs as a result of proposed changes to reporting requirements. The proposed reporting requirements for plugging of exploration boreholes and completion of cased exploration holes may require additional coordination between the exploration permittee and its drilling contractor. Much of the information to be reported to the Commission under the proposed amendments and new rules already is required to be reported by annual affidavit under the existing rules. Exploration companies already routinely record the information during drilling, although not currently on a form or in the format designated by the Commission in the proposed rules. The Commission estimates that each permittee could incur a nominal additional one-time cost of approximately \$1,000, irrespective of the number of permits held, to implement a transition to the revised reporting scheme mandated by the proposed changes. The proposed reporting requirements will also require new reporting forms, maps, and additional postage costs of approximately \$200 per permit per year. In addition, the cost for preparing a permit application will increase somewhat beyond the current requirements. The proposed rules require that additional baseline and property information be provided in the form of tables and maps. Most of this information would already have been obtained by a permittee for other purposes. Nevertheless, the Commission estimates that the resulting increased cost of preparation of a permit application would be approximately \$500.

The Commission considered the use of the alternative regulatory method commonly termed "permit by rule," to achieve the purpose of the proposed rules while minimizing the adverse impacts on small businesses. Permit by rule does not require submittal of a permit application, instead relying on self-reporting and periodic inspections. The Commission has rejected this approach, primarily because under such a method, the Commission would not have available to it the type and amount of site-specific information necessary for the Commission to meet the continuing notice requirements in HB 3837 and to ensure the protection of the health, safety, and environmental and economic welfare of the state. In addition, reliance on self-reporting and periodic inspections, when coupled with the show-cause enforcement procedure also established in the Act, would not allow the Commission to meet its mandate under the Act.

The second requirement under Texas Government Code, §2006.002, is for a state agency to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule that may have an adverse economic effect on a small business or micro-business. This analysis must consider using, if consistent with the health, safety, and environmental and economic welfare of the state, regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses. The state agency must include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business.

As set forth in HB 3837, there are two primary objectives and purposes of regulating uranium exploration through a permitting process. First, such a process includes requirements for proper reclamation of land explored for minerals to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, and property rights of the citizens of Texas, and thus promoting the subsequent beneficial use of the land. Second, the process ensures that exploration and surface mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources and are accomplished as contemporaneously as practicable with the exploration. Proper reclamation of land explored for minerals includes proper plugging of boreholes drilled during the conduct of exploration and reclamation of the surface disturbance, including backfilling the associated pits that were excavated during the drilling process, burying any radioactive materials exposed during exploration, leveling the surface to the approximate original contour, and re-vegetating the land. In performing the analysis mandated by Texas Government Code, §2006.002(c), the Commission recognizes that the cost of compliance with the proposed new rules and amendments would potentially represent a portion of a small business' or micro-business' exploration budget greater than a corresponding budget of a large company conducting uranium exploration. Irrespective of this consideration, the statutory requirements to mitigate the potential effects to the environment and public health and safety, and the administration and enforcement thereof, exist regardless of the economic effects to the entity conducting the activities. Therefore, the Commission has determined that the use of different regulatory methods, although they might minimize the adverse economic effects on small businesses and micro-businesses, is incompatible with the Commission's duty to protect health, safety, and environmental and economic welfare of the state, and with the Commission's obligation to the objectives set forth in the statute, as revised by HB 3837, to protect the surface and groundwater resources of the state.

The Commission has determined that the proposed amendments and new rules will not affect a local economy; therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

The Commission has determined that the proposed amendments and new rules in Chapter 11 are not major environmental rules, because the rules do not meet the requirements set forth in Texas Government Code, §2001.0225(a).

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 <http://www.rrc.state.tx.us/rules/commentform.php>; or by electronic mail to rulescoordinator@rrc.state.tx.us and should refer to SMRD Docket No. 01-09. Comments will be accepted until 5:00 p.m. on Monday, June 7, 2010, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal, as well as an online comment form, will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons more than two additional weeks to review, analyze, and draft and submit comments. Further, the initial draft version of this proposal was the subject of a stakeholders' meeting, at which the Commission staff received input regarding the draft proposal. As a result of that meeting, the staff made some changes to the draft before presenting it

to the Commission to request approval to publish the proposal in the *Texas Register* for formal comment. A second revised proposal was also published.

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 John Caudle, Director, Surface Mining and Reclamation Division, at (512) 463-6900. The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

DIVISION 1. INTRODUCTION

16 TAC §§11.71 - 11.74

The Commission proposes the amendments and new rules under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments and new rules.

Issued in Austin, Texas on April 20, 2010.

§11.71. Purpose and Authority.

In order to prevent the adverse effects to society and the environment resulting from unregulated surface mining operations; to ensure [~~assure~~] that the rights of surface landowners and other persons with a legal interest in the land or appurtenances are protected from such unregulated surface mining operations; to ensure [~~assure~~] that surface mining operations are not conducted where reclamation as required by the Texas Railroad Commission is not possible; to ensure [~~assure~~] that exploration and surface mining operations are so conducted as to prevent unreasonable degradation to land and water resources; to ensure [~~assure~~] that reclamation of all explored land and surface-mined lands is accomplished as contemporaneously as practicable with the exploration activity and surface mining operation, recognizing that the extraction of minerals by responsible mining operations is an essential and beneficial economic activity, these sections are promulgated pursuant to the directive and authority of the Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131₂ *et seq.* (the "Act"), and any amendment to it.

§11.72. Applicability.

(a) No person shall conduct any uranium exploration activity or surface mining operation without having first obtained a uranium exploration permit or surface mining permit issued by the commission pursuant to this subchapter and the Act.

(b) The provisions of this chapter [~~these sections~~] shall not apply to:

(1) surface mining operations conducted on public lands regulated by the General Land Office of Texas; provided that such affected lands are reclaimed in a manner consistent with the provisions of this chapter [these sections]; and

(2) (No change.)

§11.73. Uranium Exploration Forms.

Forms required to be filed at the Commission for conducting uranium exploration shall be those prescribed by the Commission as listed in Table 1 of this section. All Commission forms listed in Table 1 for uranium exploration and required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information.

Figure: 16 TAC §11.73

§11.74. Information Subject to Public Review.

(a) All information filed by an applicant or permittee is considered essential for public review unless the provisions of subsection (b) of this section apply.

(b) An applicant or permittee may identify as confidential specific information concerning mineral deposits, test borings, core samples, geophysical logs, trade secrets, or privileged commercial or financial information relating to the competitive rights of the applicant for or permittee of any exploration permit or surface mining permit. At the time the information is filed, the applicant or permittee shall identify all specific information claimed to be confidential and shall set forth all facts and arguments in support of this claim. Information claimed to be confidential shall be submitted separately from the rest of the application in a clearly marked sealed envelope.

(1) The director shall review the specific information identified as confidential by the applicant or permittee and, within 10 business days from the date of filing, the director shall make a written determination as to whether the specific information is essential for public review. The director's determination is subject to appeal to the Commission within 10 business days of issuing such determination. If the director determines that the specific information is essential for public review, the director shall set forth all facts and reasoning in support of that determination. Ten business days following the issuance of that determination, the director shall place the specific information in the public file, unless the applicant or permittee appeals the director's determination to the Commission.

(2) A member, employee, or agent of the Commission shall not disclose specific information that has been determined in paragraph (1) of this subsection to be confidential and not essential for public review.

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

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001950

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: June 6, 2010

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



DIVISION 2. DEFINITIONS

16 TAC §11.81, §11.82

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on April 20, 2010.

§11.81. Statutory Definitions.

As used in this subchapter, the following words defined in the Act, §131.004, shall have the definitions therein set forth and as they may be hereafter severally amended. For convenience in reference, such definitions are as follows.

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

(8) Party to the administrative proceedings--Any person who has participated in a public hearing or filed a valid petition or timely objection pursuant to any provision of the Act; a party to the administrative proceedings may or may not be a party as defined in the APA.

(9) - (10) (No change.)

~~[(11) Person affected--Any person who is a resident of a county or any county adjacent or contiguous to the county in which a mining operation is or is proposed to be located, including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government and who demonstrates that he has suffered or will suffer actual injury or economic damage.]~~

~~[(11) [(42)] Reclamation--The process of restoring an area affected by a surface mining operation to its original or other substantially beneficial condition, considering past and possible future uses of the area and the surrounding topography.~~

~~[(12) [(43)] Surface mining--The mining of minerals by removing the overburden lying above the natural deposit of minerals and mining directly from the natural deposits that are exposed and those aspects of underground mining having significant effects on the surface; provided, this definition shall not be construed to include in situ mining activities associated with the removal of uranium or uranium ore.~~

~~[(13) [(44)] Surface mining operation--Those activities conducted at or near the mining site and concomitant with the surface mining, including extraction, storage, processing and shipping of minerals and reclamation of the land affected.~~

~~[(14) [(45)] Surface mining permit--The written certification by the commission that the named operator may conduct the surface mining operations described in the certification during the term of~~

the surface mining permit and in the manner established in the certification. A surface mining permit does not include:

(A) a discharge permit issued by the Commission pursuant to the Act; or

(B) an exploration permit issued by the Commission pursuant to this subchapter (relating to Substantive Rules-Uranium Exploration and Surface Mining).

(15) ~~[(16)]~~ Topsoil--The unconsolidated mineral matter naturally present on the surface of the earth which has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and which is necessary for the growth and regeneration of vegetation on the surface of the earth.

(16) ~~[(17)]~~ Toxic material--Any substance present in sufficient concentration or amount to cause injury or illness to plant, animal, or human life.

§11.82. *Regulatory Definitions.*

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

(1) (No change.)

(2) Act--The Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131, et seq.

(3) Administrative Procedure Act; APA--Texas Government Code, Chapter 2001.

(4) Applicant--A person who is applying for a new permit or an amendment to or a renewal or transfer of a current permit.

(5) ~~[(3)]~~ Contiguous area--Includes all areas touching upon the boundaries of the land affected by the surface mining operation which the operator proposes to surface mine notwithstanding areas separated by terrain features such as streams, roads, gas lines, and power transmission lines.

(6) Director--The director of the Surface Mining and Reclamation Division or the director's delegate.

(7) Division--The Surface Mining and Reclamation Division of the Commission or its director or employees.

(8) Drilling completion--The time at which total drilling depth has been reached and the exploration borehole has been logged.

(9) Examiner--The person appointed by the Commission to conduct hearings.

(10) Exploration borehole--An uncased hole created with a drill, auger, or other boring tool for exploring strata in search of uranium deposits.

(11) Exploration reclamation--The process of restoring an area affected by activities conducted under a uranium exploration permit to its original or other substantially beneficial condition.

(12) ~~[(4)]~~ Highwall--The vertical or nearly vertical wall of exposed strata adjacent to the site of a mineral deposit which results from surface mining excavation.

(13) Permit--A surface mining permit, as defined in this section, or a uranium exploration permit, as defined in this section.

(14) ~~[(5)]~~ Rules--The regulations promulgated by the commission pursuant to the authority of the Texas Uranium Exploration, Surface Mining, and Reclamation Act.

(15) ~~[(6)]~~ Terracing--Grading where the steepest contour of the highwall shall not be at a greater angle from the horizontal than that set by the commission in approving a specific reclamation plan calling for terracing with the table portion of the restored area flat and a flat terrace without depressions to hold water and with adequate provision for drainage, unless otherwise approved by the commission.

(16) Uranium exploration permit--The written certification by the Commission that the named entity may conduct the uranium exploration activities described in the certification during the term of the permit and in the manner and subject to the conditions established in the certification. A uranium exploration permit does not include:

(A) a uranium surface mining permit issued by the Commission pursuant to this chapter; or

(B) a permit issued by the Texas Commission on Environmental Quality pursuant to Texas Water Code, §27.011 and §27.0513.

(17) Well--Any excavation that is drilled, cored, bored, washed, fractured, driven, dug, jetted, or otherwise constructed for the intended use of locating, monitoring, dewatering, depressurizing, observing, diverting, or acquiring groundwater, or for conducting pumping or aquifer tests.

(18) Well completion--Activities undertaken as a part of well installation to render the well usable for its intended purpose. Well completion includes, at a minimum, the installation of casing; sealing the well annulus to the ground surface; and capping the well.

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

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001951

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: June 6, 2010

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



DIVISION 3. URANIUM SURFACE MINING PERMITS

16 TAC §§11.92 - 11.100

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on April 20, 2010.

§11.92. Surface Mining Permit Application.

A permit application may cover one or more surface mining operations which may or may not be contiguous. The application for noncontiguous operations may contain a consolidated reclamation plan covering each of the separate operations unless the nature of the operations varies to such an extent to require the delineation of distinctly separate reclamation plans. Three copies of the permit application shall be submitted to the commission.

§11.93. Elements of Surface Mining Permit Application.

The permit application for surface uranium mining shall consist of the following elements.

(1) An initial application fee of \$400 [~~\$200~~] shall be submitted in the form of cash or check and if check, it should be made payable to the Railroad Commission of Texas [~~State of Texas~~].

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

(4) The applicant shall include a plan to reclaim all land disturbed by the surface mining operation pursuant to the requirements of §§11.151-11.154 of this title (relating to Surface Mining Reclamation Plan; Surface Mining Reclamation Standards; Alternative Methods; and Amendments [~~Reclamation~~]).

(5) (No change.)

§11.94. Surface Mining Permit Application Approval.

(a) After approval but prior to issuance of the surface mining permit, the applicant shall pay \$10 per acre of the permit area, in addition to the initial \$400 [~~\$200~~] application fee. This fee may be paid in annual installments apportioned over the term of the permit on the basis of the acreage to be disturbed during 12-month periods.

(b) (No change.)

§11.95. Surface Mining Bonding, Insurance, and Payment of Fees.

After receipt of notification of approval as provided in §11.94 of this title (relating to Surface Mining Permit Application Approval), applicant shall submit to the commission within 180 days following notification of approval:

(1) (No change.)

(2) cash or check, made payable to the Railroad Commission of Texas, in the amount set forth in the notice of approval to cover the approved application fee or the first annual installment thereon; and

(3) unless the commission accepts the bond of the operator itself, as provided in §§11.201-11.206 of this title (relating to Amount of Bond; Personal Bond; Duration of Liability; Form of Bond or Collateral; Changes in Coverage; and Release or Reduction of Bonds [~~Performance Bonds~~]), a performance bond (or other substitute collateral) covering the surface mining operation or the first increment thereof, on a form to be provided by the commission (payable to the Railroad Commission [~~State~~] of Texas) and conditioned on full and faithful performance of all requirements of the Act and the permit for which the application was filed; provided, however, that if the bond (or other substitute collateral) is provided in increments, it shall cover that area of land within the permit area on which the first increment of surface mining and reclamation operations will be conducted. The applicant shall give the commission 30 days notice before undertaking each additional increment of surface mining operations and shall include with such notice an appropriate performance bond for such increment.

§11.96. Surface Mining Permit Issuance.

The applicant shall have the right to proceed with activities covered by the [his] application immediately upon submitting the certificates, bond (or other substitute collateral), approved application fee required in §11.95 of this title (relating to Surface Mining Bonding, Insurance, and Payment of Fees), and the commission has issued a written permit for such activities. The commission will issue a written permit within 30 days after the certificates, bonds (or other substitute collateral), and approved application fee required in §11.95 of this title [~~(relating to Bonding, Insurance, Payment of Fees)~~] have been received by the commission.

§11.97. Surface Mining Permit Renewal.

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

§11.98. Surface Mining Permit Transfer.

(a) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to these rules shall be made without the written approval of the commission. Any person desiring to succeed to the interests of a permittee hereunder must file an application on a form prescribed by the commission setting out the following information.

(1) (No change.)

(2) Proof that the public liability insurance requirement of §11.95(1) of this title (relating to Surface Mining Bonding, Insurance, and Payment of Fees) will be fulfilled.

(3) Proof that the performance bond or other substitute collateral required in §11.95(3) of this title [~~(relating to Bonding, Insurance, Payment of Fees)~~] will be furnished.

(4) The statement of the applicant that the applicant [~~he~~] will faithfully carry out all of the requirements of the reclamation plan approved in the permit.

(5) (No change.)

(b) The application for transfer shall be approved, subsequent to notice and opportunity for public hearing, if any is required under §§11.91-11.100 of this title (relating to Term; Surface Mining Permit Application; Elements of Surface Mining Permit Application; Surface Mining Permit Application Approval; Surface Mining Bonding, Insurance, and Payment of Fees; Surface Mining Permit Issuance; Surface Mining Permit Renewal; Surface Mining Permit Transfer; Surface Mining Permit Approval; and Surface Mining Permit Denial [~~Surface Mining Permits~~]), on the written finding by the commission that the following requirements have been met.

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

(c) (No change.)

§11.99. Surface Mining Permit Approval.

The surface mining permit shall be granted if it is established that the application complies with the requirements of this chapter [~~these sections~~] and all applicable federal and state laws. The commission may approve a surface mining permit conditioned upon the approval of all other state permits or licenses that [~~which~~] may be required.

§11.100. Surface Mining Permit Denial.

The commission shall deny a uranium surface mining permit if:

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

(3) The commission is advised by the Texas Commission on Environmental Quality [~~Department of Water Resources~~] that the proposed mining operation will cause pollution of any water of the state, or [~~by the Texas Air Control Board~~] that the proposed mining

operation will cause pollution of the ambient air of the state, in violation of the laws of this state.

(4) - (7) (No change.)

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

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001952

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: June 6, 2010

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



DIVISION 4. TERMINATION, SUSPENSION, REVISION, AND CORRECTION OF PERMITS

16 TAC §11.113, §11.114

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on April 20, 2010.

§11.113. *Revocation or Suspension without Consent.*

Whenever on the basis of any inspection, the commission or its authorized agent or representative determines or has reason to believe that any of the elements contained in §11.111 of this title (relating to Basis of Revocation and Suspension), the commission shall:

(1) when the elements of §11.111(1) of this title [~~relating to Basis of Revocation and Suspension~~] exist, immediately order a cessation of surface mining operations on the portion relevant to the condition, practice, or violation. The cessation order shall fix a time and place for a hearing to be held before the commission which shall be as soon after the order is issued as is practicable but in no event later than 10 days. Such general notice of the hearing shall be given as in the judgment of the commission is practicable under the circumstances. No more than 24 hours after commencement of such hearing, and without adjournment of the hearing, the commission shall affirm, modify, or set aside the order;

(2) when the elements of §11.111(2) of this title [~~relating to Basis of Revocation and Suspension~~] exist, issue a notice to the permittee or his agent fixing a reasonable time but not more than 30

days for the abatement of the violation. If on expiration of the period of time as originally fixed or subsequently extended, for good cause shown, and on the written finding of the commission, the commission finds that the violation has not been abated, and after a hearing, if one is requested in writing by the operator within 15 days following the time period required to abate the violation, it may order a cessation of surface mining operations on the portion relevant to the violation. The cessation order shall remain in effect until the commission determines that the violation has been abated or until modified, vacated, or terminated by the commission pursuant to the following paragraph (3) of this section;

(3) when the elements of §11.111(3) of this title [~~relating to Basis of Revocation and Suspension~~] exist, issue an order to the permittee to show cause as to why the permit should not be suspended or revoked. The order shall fix a time and place for a hearing to be held in accordance with the notice requirements of §§11.91-11.100 of this title (relating to Term; Surface Mining Permit Application; Elements of Surface Mining Permit Application; Surface Mining Permit Application Approval; Surface Mining Bonding, Insurance, and Payment of Fees; Surface Mining Permit Issuance; Surface Mining Permit Renewal; Surface Mining Permit Transfer; Surface Mining Permit Approval; and Surface Mining Permit Denial [Surface Mining Permits]). On the permittee's failure to show cause as to why the permit should not be suspended or revoked, the commission shall suspend or revoke the permit.

§11.114. *Revision on Motion or with Consent.*

On the initiative of a [The] holder of a permit [on his own initiative] or upon request of the commission the permit holder may file an application to revise the permit [in any particular].

(1) A document shall be prepared setting forth the revisions desired. The holder of a permit shall use the form of an application for a permit and indicate thereon the changes requested. The manner of preparation of the application for a revision of a permit and the information submitted shall conform to the requirements of §11.92 of this title (relating to Surface Mining Permit Application) and §11.93 of this title (relating to Elements of Surface Mining Permit Application).

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

(5) Determinations by the commission of a revision of a permit shall be made in conformity with §11.51 of this title (relating to Decision after Public Hearing) and §11.52 of this title (relating to Decision without Public Hearing) and the procedure established for notification of disapproval of an application for a revision and method of appeal of the decision provided for in §11.52 of this title [~~relating to Decision without Public Hearing~~].

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

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001953

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: June 6, 2010

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



DIVISION 5. URANIUM EXPLORATION PERMITS AND PERMIT FEES

16 TAC §§11.131 - 11.142

The Commission proposes the new rules under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed new rules.

Issued in Austin, Texas on April 20, 2010.

§11.131. Uranium Exploration Permit: General Provisions.

(a) A person may not conduct any uranium exploration activity unless the person holds an exploration permit issued by the division.

(b) An exploration permit alone does not constitute a right to conduct uranium exploration activity. Inclusion of land within a permit boundary does not constitute authority to conduct uranium exploration activity. Permit boundaries may overlap.

(c) An exploration permit constitutes authority from the Commission to conduct uranium exploration activities in those areas covered by the permit for which the permittee has the right of entry for such activities.

(d) An exploration permit governs all disturbance of the surface and subsurface associated with determining the location, quantity, or quality of uranium deposits.

(e) A uranium exploration permit shall contain provisions to govern:

(1) locating, drilling, plugging, and abandoning exploration boreholes;

(2) casing exploration boreholes for use in the exploration process;

(3) using cased exploration wells for rig supply purposes; and

(4) plugging and abandoning cased exploration wells.

(f) Except as provided in §11.140 of this title (relating to Commission and Groundwater Conservation District Jurisdiction), a cased exploration well subject to an exploration permit is exempt from regulation by another agency, government entity, or political subdivision if the well is used for exploration or rig supply purposes.

(g) A uranium exploration permit shall be valid for a period of 12 months from the date of issuance and may be renewed pursuant to §11.134 of this title (relating to Uranium Exploration Permit Renewal).

(h) Upon completion of all exploration activity, each permittee shall renew its uranium exploration permit for an additional permit term or terms until the permittee:

(1) properly plugs all exploration boreholes and cased exploration wells and files with the division a plugging affidavit as required by §11.139 of this title (relating to Uranium Exploration Drill Site Plugging and Reporting Requirements); and

(2) with respect to all cased exploration wells that are not plugged, either:

(A) registers all such wells with the Texas Commission on Environmental Quality; or

(B) includes all such wells in an area permit issued by the Texas Commission on Environmental Quality under Texas Water Code, Chapter 27.

§11.132. Application to Conduct Uranium Exploration Activity.

(a) Each applicant shall apply for a uranium exploration permit by filing with the division a completed Form SMRD-3U (Application to Conduct Uranium Exploration Activities by Drilling) and paying the Commission the applicable fee or fees as required by §11.136 of this title (relating to Uranium Exploration Permit Fees).

(b) The application shall contain the following information necessary for the division to provide notice pursuant to §11.137 of this title (relating to Commission Notice of Uranium Exploration Permit Application, Issuance, and Denial):

(1) the name, mailing and street addresses, and telephone number of the applicant;

(2) the name, mailing and street addresses, and telephone number of the applicant's authorized representative that will be responsible for conducting the exploration activity;

(3) the name of each county in which the exploration activity is proposed, along with the following contact information by name, address, and telephone number:

(A) each groundwater conservation district within the area in which the exploration activity will occur;

(B) the mayor and health authority of each municipality within 10 miles in all directions of the boundary of the area in which the exploration activity will occur;

(C) the county judge and health authority of each county in which the exploration activity will occur; and

(D) each member of the Texas legislature who represents the area in which the exploration activity will occur;

(4) the names and addresses of all landowners of record of the surface of the exploration permit area, indexed to the land tracts identified on the map required in paragraph (6) of this subsection;

(5) the names and addresses of all mineral estate owners for which the applicant has obtained the right of entry to conduct exploration activities, indexed to the land tracts identified on the map required in paragraph (6) of this subsection;

(6) a USGS topographic map or maps (scale 1:24,000), in both paper and digital formats, showing the proposed exploration area, with the following information shown:

(A) the exploration area boundary and acreage stated to the nearest acre;

(B) the boundary of each land tract within the exploration permit area, with the tracts that the applicant has obtained the right to enter to conduct exploration activities identified; and

(C) the location of all private or public water wells that can be identified in the public record that are:

(i) within the proposed permit boundary; and

(ii) outside of but within 150 feet of the proposed permit boundary; and

(7) the following information:

(A) a description of the geology and hydrogeology for the proposed permit area that includes cross-sections and maps;

(B) an explanation of the exploration drilling method, including the depth of subsurface penetration and the estimated size of the surface disturbance;

(C) a description of the physical method for marking each borehole location for inspection;

(D) a description of the proposed plugging and well construction methods, which shall conform to the requirements of §11.138 of this title (relating to Uranium Exploration Drill Site Operating and Reclamation Requirements);

(E) a description of the proposed methods for disposing of cuttings produced by the drilling activity and preventing surface runoff from entering mud pits; and

(F) a description of the proposed procedures for leveling any disturbance caused by the drilling activity to conform to the requirements of §11.138 of this title.

(c) The application shall be signed by an authorized representative, dated, and certified, attesting to the veracity of the statements and representations in the application.

§11.133. Uranium Exploration Permit Revision.

(a) A permittee may revise a uranium exploration permit by filing with the division a completed Form SMRD-3U (Application to Conduct Uranium Exploration Activities by Drilling) no later than 30 days prior to the proposed revision implementation date and paying the Commission the fee required by §11.136 of this title (relating to Uranium Exploration Permit Fees).

(b) The uranium exploration permit revision application shall be signed by an authorized representative, dated, and certified, and shall contain all applicable information required by §11.132 of this title (relating to Application to Conduct Uranium Exploration Activity).

(c) The permittee shall describe in the revision application any changes proposed to the exploration activity or reclamation.

(d) A uranium exploration permit revision shall not have the effect of extending the initial uranium exploration permit beyond its original one-year term.

§11.134. Uranium Exploration Permit Renewal.

(a) A permittee shall apply for a permit renewal by filing with the division a completed Form SMRD-3U (Application to Conduct Uranium Exploration Activities by Drilling) at least 30 days prior to the expiration of the permit term and paying the Commission the applicable fee or fees as required by §11.136 of this title (relating to Uranium Exploration Permit Fees). In the renewal application, the permittee shall describe all revisions that are proposed for the exploration activity or reclamation. The director shall issue the renewal permit based on the written findings by the director that:

(1) the permittee is meeting the terms and conditions of the existing permit; and

(2) the permittee has provided any additional or revised information required by the director.

(b) A permittee shall file an application for renewal of its uranium exploration permit if the permittee has not met the requirements

of §11.131(h) of this title (relating to Uranium Exploration Permit: General Provisions).

§11.135. Uranium Exploration Permit Transfer.

(a) A permittee may request the transfer of its uranium exploration permit by filing with the division a completed Form SMRD-5U (Application to Transfer a Uranium Exploration Permit) and paying the Commission the applicable fee or fees as required by §11.136 of this title (relating to Uranium Exploration Permit Fees). The current permittee shall identify the prospective permittee in accordance with §11.132 of this title (relating to Application to Conduct Uranium Exploration Activity).

(b) The current permittee shall include with the permit transfer application a plugging report that meets the requirements of §11.139 of this title (relating to Uranium Exploration Drill Site Plugging and Reporting Requirements) demonstrating that the permittee has completed all plugging and reclamation requirements. Any changes proposed to the permit other than the transfer of the permit to a new permittee shall be made by application for a new permit pursuant to §11.132 of this title.

§11.136. Uranium Exploration Permit Fees.

(a) Initial uranium exploration permit fee. Each applicant for a uranium exploration permit shall pay to the Commission a uranium exploration permit fee consisting of:

(1) an amount equal to \$1.50 per acre for each acre included within the proposed exploration area identified on a map as part of the application pursuant to §11.132 of this title (relating to Application to Conduct Uranium Exploration Activity); plus

(2) an amount equal to \$50 for each exploration borehole drilled during the 12-month permit term, payable as described in subsection (e) of this section.

(b) Uranium exploration permit amendment fee. Each applicant for a uranium exploration permit amendment that proposes additional exploration area shall pay to the Commission a permit amendment fee consisting of an amount equal to \$1.50 per acre for each additional acre to be included within the proposed exploration area identified on a map as part of the application pursuant to §11.133 of this title (relating to Uranium Exploration Permit Revision).

(c) Uranium exploration permit renewal fee. Each applicant for a uranium exploration permit renewal shall pay to the Commission a fee consisting of:

(1) an amount equal to \$1.50 per acre for each acre included within the proposed exploration area identified on a map as part of the application pursuant to §11.134 of this title (relating to Uranium Exploration Permit Renewal); plus

(2) an amount equal to \$50 for each exploration borehole drilled during the 12-month permit renewal term, payable as described in subsection (e) of this section.

(d) Uranium exploration permit transfer fee. Each applicant for the transfer of a uranium exploration permit pursuant to §11.135 of this title (relating to Uranium Exploration Permit Transfer) shall pay to the Commission a non-refundable permit transfer application fee of \$500.

(e) Payment of the per-hole exploration borehole fee required pursuant to this section shall be submitted to the Commission with the monthly borehole plugging reports (Form SMRD-39U, Borehole Plugging Report, and Form SMRD-38U, Cased Exploration Well Completion Report) filed pursuant to §11.139 of this title (relating to Uranium Exploration Drill Site Plugging and Reporting Requirements).

§11.137. Commission Notice of Uranium Exploration Permit Application, Issuance, and Denial.

(a) The division shall provide concurrent written notice to the entities listed in subsection (b) of this section of:

(1) the division's receipt of an initial application for an exploration permit and the director's issuance or denial of an exploration permit;

(2) the division's receipt of an application for a permit revision that adds acreage to or removes acreage from the permit area or makes a material change in the permit boundaries and the director's issuance or denial of a permit revision;

(3) the division's receipt of an application for an exploration permit renewal and the director's issuance or denial of an exploration permit renewal; and

(4) the division's receipt of an application for an exploration permit transfer and the director's issuance or denial of an exploration permit transfer.

(b) The division shall give the notice required by subsection (a) of this section to the following:

(1) each groundwater conservation district within the area in which the exploration activity will occur or is occurring;

(2) the mayor and health authority of each municipality within 10 miles of the boundary of the area in which the exploration activity will occur or is occurring;

(3) the county judge and health authority of each county in which the exploration activity will occur or is occurring; and

(4) each member of the Texas Legislature who represents the area in which the exploration activity will occur or is occurring.

(c) In the written notice of receipt of an initial application for an exploration permit, the division shall include:

(1) the name, address, and telephone number of the applicant;

(2) the name, address, and telephone number of the applicant's representative that will be responsible for conducting the exploration activity; and

(3) information describing or showing the exploration area boundary covered by the application for an exploration permit.

(d) In the written notice of the issuance or denial of an exploration permit, permit revision (if required to be provided by subsection (a) of this section), permit renewal, or permit transfer, the division shall include information on where a copy of the approval or denial document may be obtained.

§11.138. Uranium Exploration Drill Site Operating and Reclamation Requirements.

(a) No permittee may drill an exploration borehole within 150 horizontal feet of an existing water well without the written consent of the well owner.

(b) Each permittee shall:

(1) segregate topsoil from subsoil and salvage it while digging a mud pit;

(2) protect livestock from open mud pits; and

(3) prevent surface-water runoff from entering open mud pits.

(c) Each permittee shall ensure that reclamation of the drill site occurs as contemporaneously as practicable with the drilling activity. When drilling activities are complete, the permittee shall:

(1) allow the mud pit to dry and then backfill with native subsoil followed by topsoil, to the extent that topsoil was originally present;

(2) properly dispose of trash and other debris brought to or generated at the drill site by the permittee; and

(3) return the disturbed area to approximate original contour and appropriately revegetate.

(d) Each permittee shall notify the division prior to any of the following to allow scheduling of inspections:

(1) when drilling operations will initially commence or recommence;

(2) when drilling will cease for greater than 30 days; and

(3) when cessation of drilling and plugging will be completed for the permit term.

§11.139. Uranium Exploration Drill Site Plugging and Reporting Requirements.

(a) Each permittee shall plug each exploration borehole within three business days of drilling completion. The permittee shall maintain records of borehole logging, cementing dates, and rig logs and make them available for inspection by the division.

(b) Each permittee shall plug each exploration borehole in accordance with the following requirements.

(1) Each borehole shall be plugged with Type-I neat cement from total depth to three feet below ground surface unless the director approves an alternative plugging method that meets the requirements of subsection (d) of this section.

(2) Downhole plugs shall be emplaced using tremie tubing or drill string pipe. The remainder of the hole between the top of the plug and the ground surface shall be filled with non-toxic drill cuttings or soil.

(3) To ensure that the proper plug depth is achieved, each borehole shall be checked for settling within two business days after initial plugging. If the depth to the top of the plug is not at the required distance from the surface, additional cement or alternative plugging material, if approved, shall be added to bring the plug to the required depth.

(c) Each permittee shall physically mark each plugged borehole using the specific borehole marking method described in the permit application, and shall ensure the markings remain in place until the borehole is inspected by the division. A permittee may use a section of poly rope, a piece of polyvinyl chloride (PVC) pipe, or a similar device to mark the location of the borehole.

(d) A permittee may request in writing to use an alternative plugging method or materials and shall demonstrate that the alternative methods or materials will provide at least the same level of groundwater protection as Type-I neat cement to protect and prevent communication with all formations bearing fresh water and usable quality water.

(e) No later than the last day of each month, each permittee shall file a completed Form SMRD-39U (Borehole Plugging Report) with the division showing the plugging information for each borehole plugged the previous month.

(f) Within 48 hours of drilling completion, each permittee shall install and cement casing for each exploration borehole that is to be

used as a cased exploration well. Cased exploration wells shall be completed in accordance with the standards set forth in the regulations of the Texas Department of Licensing and Regulation at 16 TAC §76.1000 (relating to Technical Requirements-Locations and Standards of Completion for Wells).

(g) No later than the last day of each month, each permittee shall file with the division a completed Form SMRD-38U (Cased Exploration Well Completion Report) showing the completion information for each exploration well cased the previous month.

(h) Each permittee shall plug boreholes or install casing in boreholes during the permit term.

§11.140. Commission and Groundwater Conservation District Jurisdiction.

(a) The Commission has jurisdiction over uranium exploration boreholes and cased exploration wells completed under an exploration permit until:

(1) exploration boreholes and cased exploration wells are properly plugged in accordance with §11.138 of this title (relating to Uranium Exploration Drill Site Operating and Reclamation Requirements); or

(2) cased exploration wells are either:

(A) registered with the Texas Commission on Environmental Quality; or

(B) included in an area permit issued by the Texas Commission on Environmental Quality under Texas Water Code, Chapter 27.

(b) Each permittee shall register each cased exploration well with the Texas Commission on Environmental Quality pursuant to the requirements in 30 TAC §331.221 (relating to Registration of Wells).

(c) A well described in §11.131(f) of this title (relating to Uranium Exploration Permit: General Provisions) is subject to a groundwater conservation district's rules regarding registration of wells if:

(1) the well is located in the groundwater conservation district and is used for monitoring purposes; and

(2) the cumulative amount of water produced from the wells located inside the area subject to and completed under the exploration permit issued exceed 40 acre-feet in one permit year.

(d) A well described in §11.131(f) of this title is subject to a groundwater conservation district's rules regarding registration, production, and reporting of wells if:

(1) the well is located in the groundwater conservation district and is used for rig supply purposes; and

(2) the cumulative amount of water produced from the wells located inside the area subject to and completed under the exploration permit issued exceed 40 acre-feet in one permit year.

(e) Each month, each permittee that has installed a cased exploration well described in §11.131(f) of this title and located in a groundwater conservation district shall report to the division and the district the total amount of water produced from each well described in §11.131(f) of this title located inside the area subject to the exploration permit. No later than the last day of each month, the permittee shall file a groundwater production report containing the following information for the previous month:

(1) well identification to correspond with information provided under §11.139(g) of this title (relating to Uranium Exploration Drill Site Operating and Reclamation Requirements); and

(2) water produced reported in gallons and acre-feet. The monthly report shall include the monthly production data and cumulative data for the permit year. Once a well begins production, monthly reports will be required even if production temporarily ceases, until the end of the permit year.

§11.141. Groundwater Quality and Well Information.

(a) At least 15 days prior to commencement of drilling, a permittee whose permit authorizes exploration in a groundwater conservation district shall obtain groundwater samples for analysis in accordance with this subsection. Within 90 days of receiving the laboratory analysis data, the permittee shall provide to the district pre-exploration groundwater quality information as follows:

(1) from each existing well located in a groundwater conservation district that is tested by the permittee before exploration; and

(2) from the following wells, as applicable:

(A) if there are fewer than 10 existing wells located inside the approved exploration area, from each well located inside the approved exploration area; or

(B) if there are at least 10 existing wells located inside the approved exploration area, from 10 existing wells that are distributed as evenly as possible throughout that area.

(b) Within 90 days of receiving the laboratory analysis data, a permittee whose permit authorizes exploration in a groundwater conservation district shall provide to the district groundwater quality information obtained during exploration within the district as follows:

(1) from each existing well that the permittee tests during exploration; and

(2) from each cased exploration well completed under the exploration permit.

(c) Each permittee shall conform the groundwater quality information required under subsections (a) and (b) of this section to the requirements of §11.142 of this title (relating to Groundwater Analysis and Reporting).

(d) Each permittee whose permit authorizes exploration in a groundwater conservation district shall file with the division the groundwater quality information required under subsections (a) and (b) of this section at the same time the information is provided to the district.

(e) Each exploration permittee that installs cased exploration wells inside a groundwater conservation district shall provide to the district, within 60 days of the installation, the following information:

(1) the permittee's name, address, and telephone number; and

(2) the following information for each cased exploration well in the district:

(A) well completion information;

(B) well logs, except any information determined by the director to be confidential pursuant to §11.74 of this title (relating to Information Subject to Public Review);

(C) the location of the well, including a legal description and the acreage of the property where the well is located;

(D) verification that the well will be used for an industrial purpose; and

(E) the type and capacity of the pump used in the well.

§11.142. Groundwater Analysis and Reporting.

(a) Each exploration permittee shall perform groundwater quality testing required under §11.141(a) and (b) of this title (relating to Groundwater Quality and Well Information) for the parameters listed in Table 1. Each permittee shall ensure that analyses are conducted in accordance with protocols set forth in *Standard Methods for Examination of Water and Wastewater*, 2005, 21st edition; *Methods for Chemical Analysis of Water and Wastes*, 1979 (EPA-600/4-79-020); and *Test Methods: Technical Additions to Methods for Chemical Analysis of Water and Wastes*, 1982 (EPA-600/4-82-055).

Figure: 16 TAC §11.142(a)

(b) In addition to reporting the analytical results as required by §11.141 of this title, each permittee shall report to the division and to the groundwater conservation district the following information:

(1) a water level from each cased exploration well completed under the exploration permit and from existing wells identified in §11.141 of this title, if the permittee determines it is possible to obtain a water level without pulling the pump or risking damage to the well; and

(2) analysis sheets from the laboratory containing:

(A) name, address, and telephone number of the analytical laboratory;

(B) date of sample collection;

(C) date of sample receipt by the laboratory;

(D) date of laboratory analysis/report;

(E) laboratory sample identification;

(F) name and signature of laboratory personnel responsible for the analysis; and

(G) the analysis results.

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

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001954

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: June 6, 2010

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



DIVISION 6. URANIUM SURFACE MINING RECLAMATION

16 TAC §§11.151 - 11.153

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on April 20, 2010.

§11.151. *Surface Mining Reclamation Plan.*

A reclamation plan, which is an essential element of the surface mining permit application, shall be developed in a manner consistent with local, physical, environmental, and climatological conditions and current mining and reclamation technologies and shall include where applicable the following information:

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

§11.152. *Surface Mining Reclamation Standards.*

The operator of all surface mining and reclamation operations not otherwise exempted or excluded shall as a minimum:

(1) (No change.)

(2) restore the land affected to the same or a substantially beneficial condition considering the present and past uses of the land, so long as condition does not present any actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution, and the operator's declared anticipated land use following reclamation is not deemed to be impractical or unreasonable, to involve unreasonable delay in implementation, or to be violative of federal, state, or local law; provided that a variety of post-mining land conditions which differ from the land condition immediately preceding the surface mining operation, including but not limited to stock ponds, fishing or recreational lakes, school or park sites, industrial, commercial, or residential sites, or open space uses, may be approved by the commission if the proposed condition is determined to be substantially beneficial and complies with the provisions of this division [~~§§11.151-11.154 of this title~~] (relating to Uranium Surface Mining Reclamation);

(3) - (10) (No change.)

(11) with respect to the use of impoundments for the disposal of mine wastes, processing wastes, or other liquid or solid wastes, incorporate current engineering practices for the design and construction of water retention facilities which, at a minimum, shall be compatible with the requirements of Texas Water Code §12.052 [~~§6.0731~~], and applicable federal laws, ensure [~~insure~~] that leachate will not pollute surface or groundwater, and locate impoundments so as not to endanger public health and safety should failure occur;

(12) - (18) (No change.)

(19) with respect to permanent impoundments of water as a part of the approved reclamation plan, ensure [~~insure~~] that:

(A) (No change.)

(B) the impoundment dam construction will meet the requirements of Texas Water Code, §12.052, [~~§6.0731~~], and applicable federal laws;

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

(20) - (28) (No change.)

(29) with respect to pipelines transmitting crude oil, liquid petroleum, natural gas, toxic, or flammable substances:

(A) - (E) (No change.)

(F) comply with the requirements of Texas Natural Resources Code, Chapter 117; Texas Utilities Code, Chapter 121; Commission pipeline safety rules in Chapter 8 of this title; federal pipeline safety requirements in 49 USC §§60101, et seq.; and federal pipeline safety rules in 49 CFR Part 191, Transportation of Natural and Other Gas by Pipeline: Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; [comply with rules and regulations pursuant to Texas Civil Statutes Article 6053-1, regarding safety regulations for gas pipeline facilities; Texas Railroad Commission, Gas Utilities Docket Number 446 (December 31, 1970); 40 CFR §§191, 192, and 195;] and

(G) (No change.)

§11.153. Alternative Methods.

A method of reclamation other than that provided in §11.151 of this title (relating to Surface Mining Reclamation Plan) and §11.152 of this title (relating to Surface Mining Reclamation Standards) may be approved by the commission after public hearing, if the commission determines that any method of reclamation required by this section is not practicable and that such alternative method will provide for the affected land to be restored to a substantially beneficial condition.

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

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001956

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: June 6, 2010

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



DIVISION 8. MINE CLOSING AND RELEASE

16 TAC §11.181, §11.182

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on April 20, 2010.

§11.181. Surface Mine Closing.

Any incremental part of a mining operation for which a separate bond has been submitted will be considered as closed for the purposes of this division [these sections] at such time as the operator demonstrates [the following] to the commission that:

(1) ~~[that]~~ all the requirements of Division 6 of this subchapter [~~§§11.151-11.154 of this title~~] (relating to Uranium Surface Mining Reclamation) have been met; and

(2) ~~[that]~~ vegetative cover, where required, has sustained itself for a period of four years.

§11.182. Surface Mine Release.

Upon the fulfillment of the requirements set forth in §11.181 of this title (relating to Surface Mine Closing), the operator will be released from further responsibility for activities and reports required by these sections. The operator will be notified in writing by the commission upon such release, which notification shall be a prerequisite to final release of bond under §§11.201-11.206 of this title (relating to Amount of Bond; Personal Bond; Duration of Liability; Form of Bond or Collateral; Changes in Coverage; and Release or Reduction of Bonds [Performance Bonds]).

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

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001956

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: June 6, 2010

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



DIVISION 9. REPORTS AND REPORTING

16 TAC §11.194

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on April 20, 2010.

§11.194. Release from Reporting Requirement.

Surface mining operations conducted at any individual mine shall be reported in the annual report until such time as the mine is closed pur-

suant to the provisions of §§11.181-11.182 of this title (relating to Surface Mine Closing, and Surface Mine Release).

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

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001957

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: June 6, 2010

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



DIVISION 10. PERFORMANCE BONDS

16 TAC §11.203, §11.206

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on April 20, 2010.

§11.203. Duration of Liability.

Liability under the bond shall be for the duration of surface mining and reclamation operations and for a period coincident with the operator's responsibility pursuant to §§11.181-11.182 of this title (relating to Surface Mine Closing, and Surface Mine Release).

§11.206. Release or Reduction of Bonds.

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

(c) The commission may release in whole or in part said bond or deposit if it is satisfied that reclamation covered by the bond or deposit or a portion thereof has been accomplished as required by the approved reclamation plan according to the following schedule.

(1) (No change.)

(2) When the operator has successfully completed the remaining reclamation activities, but not before the expiration of the period specified for operator responsibility in §§11.181-11.182 of this title (relating to Surface Mine Closing and Surface Mine Release), the release of the remaining portion of the bond or substitute collateral; provided, however, that no bond shall be fully released until all reclamation requirements of the approved reclamation plan are fully met.

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

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

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001958

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER C. SUBSTANTIVE RULES--URANIUM MINING DIVISION 5. EXPLORATION ACTIVITIES

16 TAC §§11.131 - 11.139

(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, Texas.)

The Railroad Commission proposes the repeal of §§11.131 - 11.139, relating to Notice of Exploration through Overburden Removal, Content of Notice, Extraction of Minerals, Removal of Minerals, Lands Unsuitable for Surface Mining, Notice of Exploration Involving Hole Drilling, Permit, Reclamation and Plugging Requirements, and Reporting, as part of a comprehensive rulemaking proceeding to implement the Commission's statutory authority for uranium exploration enacted by House Bill 3837, 80th Legislature (2007). In a separate, concurrent rulemaking, the Commission is proposing corresponding new rules §§11.131 - 11.142, to address HB 3837.

John Caudle, Director, Surface Mining and Reclamation Division, has determined that during each year of the first five years the proposed repeals would be in effect, the net fiscal effect on state government will be zero. The purpose of the proposed repeals, in conjunction with the proposed amendments and new rules in the separate, concurrent rulemaking, is to clarify several existing rules and to promulgate more comprehensive rules regarding uranium exploration by drillhole pursuant to the expanded statutory authority enacted in HB 3837. The Commission does not anticipate that the repeals will result in either an increase or decrease in the total number of uranium exploration permit applications filed with the Commission. There will be no fiscal impact on local governments.

Mr. Caudle has determined that during each year of the first five years the proposed repeals would be in effect will have no economic cost to the mining industry.

Mr. Caudle has determined that the public benefit resulting from the proposed repeals will be the clarification of the requirements and standards that apply to uranium exploration activity.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an director that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse

economic effect on small businesses or micro-businesses. The Commission has determined that the proposed repeals will not have any economic impact on any affected entity, regardless of its classification as a small business or a micro-business, and therefore there is no need to prepare an director or a regulatory flexibility analysis for this rule proposal.

The proposed repeals will not affect a local economy; therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

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 <http://www.rrc.state.tx.us/rules/commentform.php>; or by electronic mail to rulescoordinator@rrc.state.tx.us and should refer to SMRD Docket No. 01-09. Comments will be accepted until 5:00 p.m. on Monday, June 7, 2010, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal, as well as an online comment form, will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons more than two additional weeks to review, analyze, and draft and submit comments.

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 John Caudle, Director, Surface Mining and Reclamation Division, at (512) 463-6900. The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the repeals under Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007), which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on April 20, 2010.

§11.131. *Notice of Exploration through Overburden Removal.*

§11.132. *Content of Notice.*

§11.133. *Extraction of Minerals.*

§11.134. *Removal of Minerals.*

§11.135. *Lands Unsuitable for Surface Mining.*

§11.136. *Notice of Exploration Involving Hole Drilling.*

§11.137. *Permit.*

§11.138. *Reclamation and Plugging Requirements.*

§11.139. *Reporting.*

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

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001949

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: June 6, 2010

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

◆ ◆ ◆
**PART 4. TEXAS DEPARTMENT OF
LICENSING AND REGULATION**

CHAPTER 72. STAFF LEASING SERVICES

16 TAC §§72.24, 72.25, 72.100

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC) Chapter 72, §§72.24, 72.25 and 72.100 regarding the staff leasing services program.

House Bill 2249 (HB 2249) 81st Legislature, Regular Session (2009), effective September 1, 2009, amended certain sections of Texas Labor Code, Chapter 91 (the Code), by authorizing approved assurance organizations to provide initial licensing and ongoing regulatory compliance services for applicants and licensed staff leasing services organizations. Additionally, the bill authorizes the Department to accept documents and fees submitted electronically. Section 2 of the bill which amended §91.041 of the Code becomes effective December 31, 2011, and will change the criteria by which a staff leasing service's financial health would be measured--from 'net worth' to 'working capital'. That change was addressed in the adoption of rules for this program effective January 1, 2010, and will again be addressed in 2011 with proposed rules, when that change becomes effective. These proposed rules, which are recommended by staff, are necessary to implement the changes to the Code which are effective at the time of this proposal.

Proposed new §72.24 adds criteria for approval of an assurance organization, and a process by which the approval may be withdrawn or terminated. It is crucial that an assurance organization be competent to provide thorough oversight of the application process and ongoing adherence to these rules and the Code.

Proposed new §72.25 creates obligations for the Department and an approved assurance organization during the time which the assurance organization is providing regulatory compliance.

Proposed new §72.100 provides guidelines for the Department's acceptance of documents via electronic filing.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed rules will be in effect, there will be no fiscal impact on local governments as a result of enforcing or administering the proposed rules. Though there will be no fees charged and collected by the Department from the assurance organizations, there will be a cost savings to the Department as a result of enforcing the rules. The licensee's use of the services of an assurance organization will streamline the licensing and regulatory process. Additionally, electronic filing will save costs in mail and document storage.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit would include having an additional entity's oversight of the

application and regulatory process for staff leasing services organizations.

There will be no adverse economic effect on small or micro-businesses or to persons who are required to comply with the proposed rules. Though there is an anticipated cost to any staff leasing services organization which utilizes the services of an assurance organization, the use of the assurance organization is strictly voluntary and not required by the Department.

Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002 is not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Labor Code, Chapter 91 and Texas Occupations Code, Chapter 51, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Labor Code, Chapter 91 and Texas Occupations Code, Chapter 51. No other statutes, articles or codes are affected by the proposal.

§72.24. Approval of Assurance Organization.

(a) An applicant or license holder may enter into an agreement with a commission-approved assurance organization to act on behalf of an applicant or license holder in accomplishing the provisions of this chapter and the Code.

(b) The authorization of an assurance organization to act on its behalf does not relieve an applicant or license holder from the applicant or license holder's ultimate responsibility to comply with each of its obligations pursuant to this chapter and the Code.

(c) An assurance organization desiring to become approved by the commission shall submit to the department:

(1) a letter requesting approval by the commission;

(2) evidence that the assurance organization meets the qualifications set forth in Texas Labor Code, §91.001(2-a); and

(3) an explanation of how the assurance organization will certify each of the criteria and obligations required of applicants and license holders in this chapter and the Code.

(d) No later than 30 days after the assurance organization submits all of the required information to the department, the department shall notify the assurance organization in writing whether or not the assurance organization has been approved.

(e) If the department recommends not approving the assurance organization, it shall detail the deficiencies in the writing referenced in §72.24(d). The assurance organization may correct the deficiencies.

(f) The assurance organization's approval shall remain in effect until such time as either the department, after written notice, terminates the approval, or until such time as the assurance organization,

after written notice, withdraws or terminates its status as a commission-approved assurance organization.

(g) The department shall make available to the public a current list of all commission-approved assurance organizations.

(h) The department shall notify the assurance organization in writing if the department becomes aware of information which indicates that the assurance organization is failing to adequately monitor or provide compliance assistance as intended by the Code and this chapter. The department shall include such deficiencies in its written notification.

(i) The assurance organization shall respond to the department within 30 days of its receipt of the notification in §72.24(h) and both shall attempt to resolve the matters of concern. If the matters are not resolved within a reasonable time, the department may elect to recommend that the assurance organization's approval be terminated.

(j) If the assurance organization desires to withdraw or terminate its status as an approved assurance organization in Texas, it shall give the department not less than 60 days written notification of said intent, and shall agree to cooperate with the department and any license holders or applicants that have an agreement with the assurance organization in the termination process.

(k) In all matters concerning the relationship between the commission and either a commission-approved assurance organization, or an assurance organization desiring to become approved, including disputed matters, the decision of the executive director shall be binding on all parties.

§72.25. Use of Assurance Organization by Applicant or License Holder.

(a) The department shall accept an approved assurance organization's written certification as evidence that an applicant or license holder has met and continues to meet the criteria and obligations set forth in this chapter and the Code. The department retains the right to independently verify any information or certification provided by the assurance organization, including the ability to verify information contained in the assurance organization's databases.

(b) An applicant or licensee wishing to utilize the services of an assurance organization shall execute, and the assurance organization shall submit to the department, together with any fees, the appropriate application form prescribed by the executive director which includes the assurance organization's certification and authorization to the department to accept information provided by the assurance organization on behalf of the applicant or licensee.

(c) Two or more applicants or license holders using the services of an approved assurance organization and desiring to apply or renew as a group, may do so provided that the applicants or license holders apply or renew on a form prescribed by the executive director and demonstrate that they have at least two of the following criteria in common:

(1) financial statement;

(2) controlling person;

(3) insurance coverage; or

(4) ownership.

(d) Though qualified applicants may apply as a group, the department will issue licenses only to qualified applicants having unique federal employment identification numbers.

(e) An approved assurance organization shall notify the department in writing no later than 10 days after it receives a complaint,

or becomes aware of information indicating that an applicant or license holder it is providing services to is not in compliance with its obligations to the assurance organization, this chapter or the Code. The notification shall include the originals or a certified copy of all such information in the assurance organization's possession.

§72.100. Electronic Filing and Compliance.

(a) On behalf of an applicant or licensee, an approved assurance organization may electronically file with the department any application, report, or other document required by the department, this chapter, or the Code.

(b) All electronic filings made pursuant to this chapter and the Code shall be in a format prescribed by the executive director.

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

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002037

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: June 6, 2010

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



TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 231. ASSIGNMENT OF PUBLIC SCHOOL PERSONNEL

19 TAC §231.1

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §231.1(e) is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 7, 2010, issue of the Texas Register.)

The State Board for Educator Certification (SBEC) proposes an amendment to §231.1, concerning provisions for assignment of public school personnel. The proposed amendment would update the figure in 19 TAC §231.1(e) as a result of recent revisions to the Texas Essential Knowledge and Skills (TEKS) and course offerings for career and technical education (CTE) mandated by House Bill (HB) 3485, 80th Texas Legislature, 2007. The proposed amendment would also include technical changes that would clarify and update other content areas.

Section 231.1 specifies the criteria for assignment of public school personnel and includes a figure that shows a list of assignments with corresponding certificates for each assignment. Section 231.1 provides guidance to school districts with regard to the certificates required for specific assignments of public school educators.

The figure in §231.1(e) is organized into three parts. Part I includes the requirements for assignment of teachers. Part II includes the requirements for teachers certified before 1966 and assigned to Grades 6-12. Part III includes the requirements

for assignment of administrators, other instructional and professional support personnel, special education related services personnel, and paraprofessional personnel.

The proposed amendment to 19 TAC §231.1(e) would update the figure to reflect criteria for assignment of public school personnel, including assignments with corresponding certificates in the area of CTE as a result of recent revisions to the TEKS and course offerings.

HB 3485 required the State Board of Education (SBOE) to identify CTE courses that satisfy the fourth mathematics or science credit required for the recommended and distinguished graduation plans. During the review process, the number of CTE courses was reduced from over 600 to 190 by eliminating outdated courses, combining duplicate courses, incorporating innovative courses, and creating new courses. The SBOE approved 19 TAC Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education, for second reading and final adoption at the July 2009 meeting to be implemented in the 2010-2011 school year.

Also in compliance with HB 3485, the SBOE approved amendments to 19 TAC Chapter 74, Curriculum Requirements, Subchapter F, Graduation Requirements, Beginning with School Year 2007-2008, which added additional courses for a fourth mathematics and science credit and amended requirements for the minimum and advanced high school programs to align with the Recommended High School Program. The new graduation requirements allow Mathematical Applications in Agriculture, Food, and Natural Resources, if successfully completed prior to Algebra II; Engineering Mathematics; and Statistics and Risk Management to count for the fourth mathematics credit under the Recommended High School Program. The graduation requirements allow Engineering Mathematics, and Statistics and Risk Management to count for the fourth mathematics credit under the Distinguished Achievement Program. The new graduation requirements also allow Advanced Animal Science, Advanced Biotechnology, Advanced Plant and Soil Science, Food Science, and Forensic Science to count for the fourth science credit under the Recommended High School Program and Distinguished Achievement Program.

The new graduation requirements also allow the CTE Professional Communications course to satisfy the speech graduation requirement and the CTE Principles and Elements of Floral Design course to satisfy the fine arts graduation requirement.

Technical changes would also be made to clarify and update other content areas as discussed with and/or recommended by Texas Education Agency (TEA) curriculum staff. Since an analysis of certification tests standards with the CTE TEKS shows coverage, the proposed amendment would allow flexibility for school districts in hiring and course offerings. TEA Curriculum staff will be implementing required professional development to address specific course content.

Consideration to school district needs would also impact assignments in English I for Speakers of Other Languages (ESOL I) and English II for Speakers of Other Languages (ESOL II) as well as a new Speech: Grades 7-12 certificate.

Specifically, the figure in §231.1(e) would be updated to allow school districts the discretion to allow bilingual or English as a second language (ESL) certified teachers to continue teaching ESOL I and ESOL II if assigned prior to June 21, 2009.

In addition, the Speech assignment criteria would be modified to include a new Speech: Grades 7-12 certificate. The TEA staff plan to present the new Speech: Grades 7-12 certificate to the SBEC for discussion and action at a future meeting.

The proposed amendment would have no procedural and reporting implications to school districts and educators. Also, the proposed amendment would not include any locally maintained paperwork requirements to school districts and educators.

Jerel Booker, associate commissioner for educator and student policy initiatives, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Booker has determined that for the first five-year period the proposed amendment is in effect the public benefit anticipated as a result of the proposed amendment would be updated requirements relating to the assignment of educators in Texas public schools. There is no anticipated economic cost to persons or entities required to comply with the proposed amendment.

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

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator and Student Policy Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.1. *Criteria for Assignment of Public School Personnel.*

(a) The assignment requirements in this chapter apply to the holders of certificates issued on the basis of 1955, 1972, 1984, and 1987 Standards for Teacher Education as well as certificates issued on the basis of standards aligned with the Texas Essential Knowledge and Skills (TEKS) curriculum, adopted by the State Board of Education, as specified in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(b) An elementary certificate may be appropriate for teaching high school students if the level of instruction is comparable to that in elementary grades. When such an assignment is made, course outlines must be maintained in the school district files.

(c) Professional personnel employed in federally funded programs and innovative programs must have the qualifications and meet the assignment requirements specified in subsection (e) of this section and in other rules of the State Board for Educator Certification (SBEC).

(d) The assignment requirements in this chapter apply to substitute teachers. If a school district must employ a substitute teacher who is not certified, a list of the substitute teachers shall be retained in the school district files.

(e) A public school employee must have the appropriate credentials for his or her current assignment specified in the figure provided in this subsection and in other rules of the SBEC, unless the appropriate permit has been issued under Chapter 230, Subchapter Q, of this title (relating to Permits).

Figure: 19 TAC §231.1(e)
[Figure: 19 TAC §231.1(e)]

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

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002030

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,
Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: June 6, 2010

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



CHAPTER 250. ADMINISTRATION

The State Board for Educator Certification (SBEC) proposes an amendment to §250.1, the repeal of §§250.2, 250.3, 250.20, 250.30-250.34, and 250.40-250.49, and new §250.3 and §250.20, concerning provisions for administration. The sections provide for rules that establish guidelines and procedures for purchasing, rulemaking, training and education for employees, and negotiation and mediation procedures relating to certain contract disputes.

The proposed revisions to 19 TAC Chapter 250 would update the rules to reflect current law and the fact that, pursuant to the Texas Education Code (TEC), §21.035, the Texas Education Agency (TEA) provides the SBEC's administrative functions and services, which include purchasing, rulemaking, and contracts. The proposed amendment, repeals, and new sections result from the SBEC's rule review conducted in accordance with Texas Government Code, §2001.039.

Following is a description of the proposed changes.

Subchapter A. Purchasing

In accordance with the TEC, §21.035, the TEA provides SBEC's administrative functions, including purchasing and contracting. The SBEC will rarely, if ever, have a need to engage in purchasing or enter into contracts; however, if circumstances require the SBEC to do so, the proposed revisions to the purchasing and contracting provisions in this subchapter would provide standards and procedures.

Language in 19 TAC §250.1, Historically Underutilized Business (HUB) Program, would be amended to reference applicable cur-

rent law and the administrative rules of the Comptroller of Public Accounts.

Section 250.2, Ethical Standards, would be repealed since ethical standards for SBEC purchasing are no longer necessary because purchasing is now administered by the TEA. The TEA is subject to the ethical standards contained in the Texas Government Code and the administrative rules of the Comptroller of Public Accounts, the Texas Ethics Commission, and the Texas Facilities Commission.

Current 19 TAC §250.3, Vendor Protest Procedures, would be repealed and replaced by proposed new 19 TAC §250.3, Procedures for Protests, Dispute Resolution, and Appeals Relating to Purchasing and Contract Issues. The current vendor protest procedures would be replaced with the procedures used by the TEA in its own purchasing and contracts and in the purchasing and contracts it provides to the State Board of Education, which incorporate the Texas Government Code's requirements for purchasing and contract dispute resolution procedures.

Subchapter B. Rulemaking Procedures

Current 19 TAC §250.20, Petition for Adoption of Rules, would be repealed and replaced by proposed new 19 TAC §250.20, Petition for Adoption of Rules or Rule Changes, to update the process for petitioning the SBEC for the adoption, amendment, or repeal of an SBEC rule in the Texas Administrative Code. The TEC, §2001.021, requires that a state agency by rule prescribe the form for a petition and the procedures for its submission, consideration, and disposition. Proposed new §250.20 would provide that a petition be submitted to the TEA. Such petitions were previously to be submitted to the executive director of the SBEC, a position that is no longer authorized by the TEC. The figure in proposed new §250.20(a) would adopt in rule the form to be submitted for such a petition.

Under the new procedure, the TEA would review the petition and make a recommendation within 60 calendar days that rulemaking proceedings be initiated or that the petition be denied. The recommendation would be presented to the SBEC for action on the petition within this time limit if possible, and if not, the TEA would respond to the petitioner within the required 60 calendar days, notifying the petitioner of the date of the SBEC meeting at which the recommendation would be presented to the SBEC for action.

Subchapter C. Training and Education for Employees

Pursuant to the TEC, §21.035, the TEA shall provide the SBEC's administrative functions and services. Since the SBEC no longer has employees, current 19 TAC §§250.30-250.34 would be repealed. Texas Government Code, Chapter 656, Subchapters C and D, provide for training of state employees such as the TEA employees who carry out SBEC's administrative functions. The TEA's operating procedures further provide for TEA employee training standards and procedures.

Subchapter D. Negotiation and Mediation Procedures Relating to Certain Contract Disputes

Pursuant to the TEC, §21.035, the TEA shall provide the SBEC's administrative functions and services. As a result, current 19 TAC §§250.40-250.49 would be repealed and replaced by proposed new §250.3, Procedures for Protests, Dispute Resolution, and Appeals Relating to Purchasing and Contract Issues, since the proposed new rule would apply to purchasing functions. Proposed new §250.3 would incorporate the Texas Gov-

ernment Code's requirements for purchasing and contract dispute resolution procedures.

Technical Change

The chapter title for 19 TAC Chapter 250 would be amended to remove the word "agency" since the SBEC no longer is a separate state agency and the TEA provides the SBEC's administrative functions and services.

Regarding procedural and reporting implications, proposed new 19 TAC §250.20 would establish in rule the form to be used when an individual elects to petition adoption of SBEC rule changes in the Texas Administrative Code. The proposed rule actions would not include any locally maintained paperwork requirements to school districts and educators.

Jerel Booker, associate commissioner for educator and student policy initiatives, has determined that for the first five-year period the proposed amendment, repeals, and new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule actions.

Mr. Booker has determined that for the first five-year period the proposed amendment, repeals, and new sections are in effect the public and student benefit anticipated as a result of the proposed amendment, repeals, and new sections would be updated rules reflecting current law and the transfer of all SBEC administrative functions and services to the TEA. There are no anticipated economic costs to persons or entities required to comply with the proposed amendment, repeals, and new sections.

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

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment, repeals, and new sections submitted under the Administrative Procedure Act must be received by the Department of Educator and Student Policy Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, associate commissioner for educator and student policy initiatives, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

SUBCHAPTER A. PURCHASING

19 TAC §250.1, §250.3

The amendment and new section are proposed under the Texas Education Code (TEC), §21.035, which states that the Texas Education Agency shall provide the board's administrative functions and services; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; Texas Government Code, §2155.076, which requires that each state agency by rule develop and adopt protest procedures for resolving vendor protests relating to purchasing

issues; §2161.003, which authorizes the SBEC to adopt the HUB rules of the state as its own rules; and Chapter 2260, which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim.

The proposed amendment and new section implement the TEC, §§21.035, 21.040(6), and 21.041(a) and (b)(1), and Texas Government Code, §2155.076, §2161.003, and Chapter 2260.

§250.1. Historically Underutilized Business (HUB) Program.

In accordance with the Texas Government Code, §2161.003, the State Board for Educator Certification adopts by reference the rules of the Comptroller of Public Accounts, found at Title 34 Texas Administrative Code, §§20.11-20.22 and §§20.24-20.28, concerning the Historically Underutilized Business (HUB) Program. [The State Board for Educator Certification hereby adopts the rules of the Texas Building and Procurement Commission relating to the Historically Underutilized Business (HUB) Program and codified at 4 Texas Administrative Code Chapter 111, Executive Administration Division, Subchapter B, Historically Underutilized Business Program, §§111.11-111.28.]

§250.3. Procedures for Protests, Dispute Resolution, and Appeals Relating to Purchasing and Contract Issues.

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract under the jurisdiction of the State Board for Educator Certification (SBEC) may formally protest to the director of the Texas Education Agency (TEA) division responsible for purchasing and contracts. Such protests must be in writing and received in the purchasing and contracts director's office within ten working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested, unless the director finds that good cause for delay is shown or determines that a protest or appeal raises issues significant to the TEA's procurement practices or procedures.

(b) Formal protests must conform to the requirements of this subsection and subsection (d) of this section, and shall be resolved in accordance with the procedure set forth in subsections (e)-(f) of this section. Copies of the protest must be mailed or delivered by the protesting party to the TEA and to the other interested parties. For the purposes of this section, "interested parties" means all respondents who have submitted bids, proposals, or offers for the contract involved. Names and addresses of all interested parties may be obtained by sending a written request for this information to the purchasing and contracts director.

(c) In the event of a timely protest or appeal under this section, the TEA shall not proceed further with the solicitation or with the award of the contract unless the commissioner of education or the commissioner's designee, in consultation with the purchasing and contracts director, makes a written determination that the expeditious award of the contract is necessary to protect substantial interests of the state. A copy of this determination shall be mailed to the protesting party.

(d) A formal protest petition must be sworn and must contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the TEA and other identifiable interested parties.

(e) The purchasing and contracts director shall have the authority to settle and resolve the dispute concerning the solicitation or award of a contract. The director may solicit written responses to the protest petition from other interested parties, and if he or she makes such a request, the protesting party shall be given notice of the director's request and of any written responses to the request that the director receives. The director may consult with the TEA office of legal services concerning the dispute.

(f) If the protest is not resolved by mutual agreement, the purchasing and contracts director will issue a written determination on the protest.

(1) If the director determines that no violation of rules or statutes has occurred, he or she shall so inform the protesting party and other interested parties by a letter which sets forth the reasons for the determination.

(2) If the director determines that a violation of rules or statutes has occurred in a case where a contract has not been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the director determines that a violation of rules or statutes has occurred in a case where a contract has been awarded, he or she shall so inform the protesting party and other interested parties by a letter which sets forth the reasons for the determination. In such a case, the director has the authority to declare the contract void. If he or she declares the contract void, this fact shall be included in the determination letter.

(g) The purchasing and contracts director's determination on a protest may be appealed by the protesting party to the commissioner of education or the commissioner's designee. An appeal of the director's determination must be in writing and must be received in the commissioner's office no later than ten working days after the date of the director's determination. An appeal of the determination shall be limited to those issues raised in the protest petition and the determination letter. Copies of the appeal must be mailed or delivered by the appealing party to the TEA and other interested parties and must contain a sworn statement that such copies have been provided.

(h) The commissioner or the commissioner's designee shall review the protest petition, the purchasing and contracts director's requests for written responses to the protest petition, any written responses received from other interested parties, the determination, and the appeal.

(i) The commissioner or the commissioner's designee may, in his or her discretion, issue a written decision on the protest or refer the matter to the SBEC for consideration at a regularly scheduled open meeting.

(j) A decision issued either by the SBEC in an open meeting or in writing by the commissioner or the commissioner's designee shall be the final administrative action of the TEA.

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

Filed with the Office of the Secretary of State on April 26, 2010.
TRD-201002031

Karen Loonam
Deputy Associate Commissioner, Educator Certification and Standards,
Texas Education Agency
State Board for Educator Certification
Earliest possible date of adoption: June 6, 2010
For further information, please call: (512) 475-1497



19 TAC §250.2, §250.3

(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 State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the Texas Education Code (TEC), §21.035, which states that the Texas Education Agency shall provide the board's administrative functions and services; §21.040(6), which allows the State Board for Educator Certification (SBEC) authority to develop and implement policies that define responsibilities of the SBEC; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; Texas Government Code, §2155.076, which requires that each state agency by rule develop and adopt protest procedures for resolving vendor protests relating to purchasing issues; §2161.003, which authorizes the SBEC to adopt the HUB rules of the state as its own rules; and Chapter 2260, which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim.

The proposed repeals implement the TEC, §§21.035, 21.040(6), and 21.041(a) and (b)(1), and Texas Government Code, §2155.076, §2161.003, and Chapter 2260.

§250.2. *Ethical Standards.*

§250.3. *Vendor Protest Procedures.*

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

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002032

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,
Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER B. RULEMAKING PROCEDURES

19 TAC §250.20

(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 State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the Texas Education Code (TEC), §21.035, which states that the Texas Education Agency shall provide the board's administrative functions and services; §21.041(b)(1), which requires the State Board for Educator Certification to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and Texas Government Code, §2001.021, which authorizes a state agency to by rule prescribe the form for a petition and the procedure for the submission, consideration, and disposition.

The proposed repeal implements the TEC, §21.035 and §21.041(b)(1), and Texas Government Code, §2001.021.

§250.20. *Petition for Adoption of Rules.*

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

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002033

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,
Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: June 6, 2010

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



19 TAC §250.20

The new section is proposed under the Texas Education Code (TEC), §21.035, which states that the Texas Education Agency shall provide the board's administrative functions and services; §21.041(b)(1), which requires the State Board for Educator Certification to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and Texas Government Code, §2001.021, which authorizes a state agency to by rule prescribe the form for a petition and the procedure for the submission, consideration, and disposition.

The proposed new section implements the TEC, §21.035 and §21.041(b)(1), and Texas Government Code, §2001.021.

§250.20. *Petition for Adoption of Rules or Rule Changes.*

(a) Any interested person may petition for the adoption, amendment, or repeal of a rule of the State Board for Educator Certification (SBEC) by filing a petition on a form provided in this subsection. The petition shall be signed and submitted to the Texas Education Agency (TEA). The TEA shall evaluate the merits of the proposal to determine whether to recommend that rulemaking proceedings be initiated or that the petition be denied.

Figure: 19 TAC §250.20(a)

(b) In accordance with the Texas Government Code, §2001.021, the TEA must respond to the petitioner within 60 calendar days of receipt of the petition.

(1) Where possible, the recommendation concerning the petition shall be placed on the SBEC agenda, and the SBEC shall act on the petition within the 60-calendar-day time limit.

(2) Where the time required to review the petition or the scheduling of SBEC meetings will not permit the SBEC to act on the

petition within the required 60 calendar days, the TEA shall respond to the petitioner within the required 60 calendar days, notifying the petitioner of the date of the SBEC meeting at which the recommendation will be presented to the SBEC for action.

(c) The SBEC will review the petition and the recommendation and will either direct the TEA to begin the rulemaking process or deny the petition, giving reasons for the denial. The TEA will notify the petitioner of the SBEC's action related to the petition.

(d) Without limitation to the reasons for denial in this subsection, the SBEC may deny a petition on the following grounds:

(1) the SBEC does not have jurisdiction or authority to propose or to adopt the petitioned rule;

(2) the petitioned rule conflicts with a statute, court decision, another rule proposed or adopted by the SBEC, or other law;

(3) the SBEC determines that a different proceeding, procedure, or act more appropriately addresses the subject matter of the petition than initiating a rulemaking proceeding; or

(4) the petitioner is inappropriately using the opportunity to file a rulemaking petition under this section, as evidenced by filing a petition:

(A) before the fourth anniversary of the SBEC's having previously considered and rejected a similar rule on the same subject matter; or

(B) to amend a rule proposed or adopted by the SBEC that has not yet become effective.

(e) If the SBEC initiates rulemaking procedures in response to a petition, the rule text which the SBEC proposes may differ from the rule text proposed by the petitioner.

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

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002034

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,
Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER C. TRAINING AND EDUCATION FOR EMPLOYEES

19 TAC §§250.30 - 250.34

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

The repeals are proposed under the Texas Education Code (TEC), §21.035, which states that the Texas Education Agency shall provide the board's administrative functions and services.

The proposed repeals implement the TEC, §21.035.

§250.30. *Definitions.*

§250.31. *Findings, Policy, and Applicability.*

§250.32. *Eligibility.*

§250.33. *Employee Obligations.*

§250.34. *Report.*

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

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002035

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,
Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER D. NEGOTIATION AND MEDIATION PROCEDURES RELATING TO CERTAIN CONTRACT DISPUTES

19 TAC §§250.40 - 250.49

(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 State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the Texas Education Code (TEC), §21.035, which states that the Texas Education Agency shall provide the board's administrative functions and services; and Texas Government Code, Chapter 2260, which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim.

The proposed repeals implement the TEC, §21.035, and Texas Government Code, Chapter 2260.

§250.40. *General.*

§250.41. *Definitions.*

§250.42. *Dispute Resolution Process.*

§250.43. *Required Contract Provisions.*

§250.44. *Damages.*

§250.45. *Notice of Claim or Counterclaim.*

§250.46. *Duty to Negotiate.*

§250.47. *Negotiation Timetable.*

§250.48. *Mediation.*

§250.49. *Referral to the State Office of Administrative Hearings.*

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

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002036

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,
Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: June 6, 2010

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



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 221. ADVANCED PRACTICE NURSES

22 TAC §221.1, §221.3

INTRODUCTION. The Texas Board of Nursing (Board) proposes amendments to §221.1 (relating to *Definitions*) and §221.3 (relating to *Education*). The amendments are proposed under the Occupations Code §301.152(a) and (b) and §301.151 and are necessary to clarify existing language within the sections and to enhance consistency among Board rules related to advanced nursing practice. Specifically, the proposed amendments: (i) clarify that an applicant for advanced practice licensure must complete a qualifying program of study at the master's degree level or higher; (ii) replace references to the term "specialty" with references to the term "population focus area"; (iii) replace references to the term "advanced practice nurse" with references to the term "advanced practice registered nurse"; and (iv) replace references to the term "authorization" with references to the term "licensure".

The Advanced Practice Nursing Advisory Committee

The Advanced Practice Nursing Advisory Committee (Committee) met on February 17, 2010, to review and discuss the educational requirements of Chapter 221 (related to *Advanced Practice Nurses*). Members of the Committee expressed concern that the rule did not provide clear enough guidance regarding the completion of an advanced practice nursing program beyond a master's degree level. Members pointed out that the rule did not specifically address doctoral programs in nursing. Members felt that this omission could cause ambiguity or confusion regarding the manner in which the educational requirements of the rule could be satisfied. As a result, members recommended that the Board amend §221.1 and §221.3 to clarify that an applicant for advanced practice licensure could complete a doctoral program in nursing in order to satisfy the existing educational requirements of the rule.

The Committee also recommended replacing references to the term "specialty" in §221.1 and §221.3 with references to the term "population focus area" and replacing references to the term "advanced practice nurse" in §221.1 with references to the term "advanced practice registered nurse". These changes were recommended for consistency with the Advanced Practice Registered Nurse Model Act/Rules and Regulations and amendments previously made to Chapter 222 of this title (relating to *Advanced Practice Registered Nurses with Prescriptive Authority*). Finally, the Committee recommended replacing the term "authorization" in §221.3 with the term "licensure" for consistency with amendments previously made to §221.4 (relating to *Advanced Practice*

Registered Nurse Licensure Requirements) and §221.6 of this chapter (relating to *Interim Approval*).

The Educational Requirements of §221.1 and §221.3

The Committee's recommended clarifications to §221.1 and §221.3 are consistent with the Board's historic interpretation and application of the educational requirements for advanced practice licensure. The Board has required an applicant for advanced practice licensure to complete an advanced practice program of study at the master's degree level since January 1, 2003. This has been the Board's minimum educational standard for advanced practice licensure since that time. Because the completion of an advanced practice program of study at a level higher than a master's degree level, such as at a doctorate level, necessarily meets and, even exceeds, the minimum educational requirements of §221.1 and §221.3, the Board has consistently permitted the completion of such programs to satisfy the educational requirements of Chapter 221 since 2003.

Although the Board itself has not received any questions from the public regarding the educational requirements of §221.1 and §221.3, the Board has determined that it is appropriate to propose amendments to these sections based upon the comments of the Committee, in order to clarify Board intent and meaning. The Board originally established the Committee to consider regulations that have an impact on advanced practice nursing and to provide comments and recommendations to the Board. As such, the Board considers the Committee's concerns and recommendations essential in monitoring the effectiveness of the Board's rules. The Board agrees with the Committee that the existing educational requirements in §221.1 and §221.3 could be clarified to address the completion of a post-master's certificate or doctoral degree program. As such, the Board is proposing amendments to §221.1(2) and §221.3(c)(4) and (d)(1) to clarify that the completion of a program of study at the master's degree or higher level (such as a post-master's certificate or doctoral degree program) may satisfy the educational requirements for advanced practice licensure. The Board has determined that clarifying the existing language of §221.1 and §221.3 will not alter the Board's historical interpretation or application of the educational requirements of these sections. Further, the proposed changes are designed to remove any ambiguity or confusion surrounding the application of the educational requirements of §221.1 and §221.3 and are not anticipated to result in a change in Board application or interpretation of these requirements in the future.

The Advanced Practice Registered Nurse Model Act/Rules and Regulations

The Advanced Practice Registered Nurse Model Act/Rules and Regulations (Regulations) were promulgated by the National Council of State Boards of Nursing (NCSBN) during its August, 2008, Delegate Assembly. NCSBN is comprised of 60 member boards and operates as the collective voice of nursing regulation in the United States and its territories. Collectively, NCSBN develops nursing examinations, monitors trends in nursing practice and education, promotes uniformity in the regulation of nursing, conducts research on nursing practice issues, provides opportunities for collaboration among its members and other nursing and health care organizations, and promulgates model rules and regulations. Because the Regulations were designed to promote a common understanding of the appropriate scope of practice for an APRN, the Board determined that it was important to amend its own rules to include a reference to the term "advanced practice registered nurse". As such, the Board amended Chapter 222 in the February 5, 2010, issue of the

Texas Register (35 TexReg 866) to define the term "advanced practice registered nurse" and include its use throughout the chapter. The adopted definition of the term "advanced practice registered nurse" in Chapter 222 was designed to incorporate all of the substantive components of the term as set forth in the Regulations. The Regulations also included a definition of the term "population focus area". The Board amended Chapter 222 in the February 5, 2010, issue of the *Texas Register* (35 TexReg 866) to define the term "population focus area" and include its use throughout the chapter. The adopted definition of the term "population focus area" in Chapter 222 clarified the meaning of the term and was consistent with the definition of the term as set forth in the Regulations.

Chapters 221 and 222 contain the Board's advanced practice nursing requirements. The Board has determined that the terms used throughout these two chapters should be as consistent as possible, as such consistency promotes a better understanding of the Board's rules. The Board agrees with the Committee's recommendations that §221.1 and §221.3 should include the same terminology as Chapter 222, especially where the two chapters address similar issues. As a result, the Board is proposing amendments to §221.1(2) to: (i) replace references to the term "specialty" with references to the term "population focus area"; and (ii) to replace references to the term "advanced practice nurse" with references to the term "advanced practice registered nurse". Further, the Board is proposing amendments to §221.3(c) to replace references to the term "specialty" with references to the term "population focus area". These terms appear throughout Chapter 222. The proposed amendments are designed to provide necessary consistency between the two chapters.

Remaining Amendments

Finally, the Board is proposing amendments to §221.3(c) and (d) for consistency with changes previously made to §221.4 and §221.6 of this chapter in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9237). At its October 2007 meeting, the Board charged the Committee with reviewing issues related to advanced practice nursing in preparation for implementation of the Advanced Practice Registered Nurse Compact (Compact), which is authorized under the Occupations Code Chapter 305. Specifically, the Board directed the Committee to examine and determine whether the Board's approval process for advanced practice registered nurses should be referred to as a "licensure" process. At the time of the Board's charge, the Board did not refer to its approval process for advanced practice registered nurses as a "licensure" process. Instead, the Board granted individuals "authorization" to practice as advanced practice registered nurses. Based upon the Committee's recommendations, the Board ultimately determined that it would begin to refer to its approval process for advanced practice registered nurses as a "licensure" process. This decision was consistent with at least 50% of other member boards of NCSBN who already referred to their approval processes for nurse anesthetists, nurse midwives, and nurse practitioners (advanced practice registered nurses) as a licensure process. Nearly 40% of these boards also issued licenses to clinical nurse specialists (advanced practice registered nurses). Further, the Board's determination did not alter any substantive aspect of the Board's existing approval process at that time. The amendments to §221.4 and §221.6 that were adopted by the Board in November, 2008, included a change in terminology from "authorization" to "licensure" to reflect the Board's decision. In an effort to further ensure consistency between Chapters 221

and 222, the Board is now proposing amendments to §221.3(c) and (d) to replace references to the term "authorization" with references to the term "licensure".

Section-by-Section Overview.

Proposed amended §221.1(2) defines an advanced educational program as a post-basic advanced practice nurse program at the certificate, master's degree, or higher level. Further, proposed amended §221.1(2) states that, beginning January 1, 2003, a minimum of a master's degree in the advanced practice role and population focus area will be required for recognition as an Advanced Practice Registered Nurse.

Proposed amended §221.1(5) updates the definition of the Texas Board of Nursing.

Proposed amended §221.3(c) states that applicants for licensure to practice in an advanced practice role and population focus area recognized by the Board must submit verification of completion of all requirements of an advanced educational program that meets the following criteria:

(A) Advanced educational programs in the State of Texas shall be approved by the Board or accredited by a national accrediting body recognized by the Board.

(B) Programs in states other than Texas shall be accredited by a national accrediting body recognized by the Board or by the appropriate licensing body in that state. A state licensing body's accreditation process must meet or exceed the requirements of accrediting bodies specified in Board policy.

(C) Programs of study shall be at least one academic year in length and shall include a formal preceptorship.

(D) Beginning January 1, 2003, the program of study shall be at the master's degree or higher level.

(E) Applicants prepared in more than one advanced practice role and/or specialty shall demonstrate that all curricular requirements set forth in §221.3(c) have been met for each role and/or specialty.

Proposed amended §221.3(d) states that applicants for licensure as clinical nurse specialists must submit verification of the following requirements in addition to those specified in §221.3(c): completion of a master's degree or higher level in the discipline of nursing and completion of a minimum of nine semester credit hours or the equivalent in a specific clinical major. Further, clinical major courses must include didactic content and offer clinical experiences in a specific clinical specialty/practice area.

FISCAL NOTE. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Thomas has also determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit will be the adoption of clear and consistent requirements, which should result in more efficient regulation. There are no anticipated economic costs to persons who are required to comply with the proposal. None of the proposed amendments substantively alter the existing requirements of §221.1 or §221.3 or impose new or additional requirements or restrictions upon individuals required

to comply with the proposal. Rather, the proposed amendments clarify the existing educational requirements for advanced nursing practice. The Board does not anticipate altering its historical interpretation or application of these educational requirements nor does it anticipate that an individual's method of compliance with these requirements will be altered due to the proposed amendments. Further, the proposed amendments update terminology used throughout §221.1 and §221.3 for consistency with terminology contained in Chapter 222. However, the proposed amendments do not substantively affect the requirements of the sections nor do they impose any new or additional requirements or restrictions upon individuals required to comply with the proposal. Additionally, the Board does not anticipate that an individual's method of compliance with the requirements of §221.1 and §221.3 will be altered due to the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

TAKINGS IMPACT ASSESSMENT. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 6, 2010, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or faxed to (512) 305-8101. An additional copy of the comments on the proposal or any request for a public hearing must be simultaneously submitted to Jolene Zych, Advanced Practice Nursing Consultant, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to jolene.zych@bon.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Occupations Code §301.152(a) and (b) and §301.151. Section 301.152(a) defines the term "advanced practice nurse" as a registered nurse approved by the Board to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is also synonymous with "advanced nurse practitioner." Section 301.152(b) authorizes the Board to adopt rule to establish: (i) any specialized education or training, including pharmacology, that a registered nurse must have to carry out a prescription drug order under the Occupations Code §157.052 and a system for assigning an identification number to a registered nurse who provides the Board with evidence of completing the specialized education and training requirement under §301.152(b)(1)(A); (ii) approve a registered nurse as an advanced practice nurse; and (iii) initially approve and biennially renew an advanced practice nurse's authority to carry out or sign a prescription drug order under the Occupations Code Chapter 157. Section 301.151 authorizes the Board to adopt and enforce

rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Rule §221.1 and §221.3, Statute §301.152(a) and (b) and §301.151.

§221.1. Definitions.

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

(1) (No change.)

(2) Advanced educational program--A post-basic advanced practice nurse program at the certificate, ~~or~~ master's degree, or higher level. Beginning January 1, 2003, a minimum of a master's degree in the advanced practice role and population focus area [specialty] will be required for recognition as an Advanced Practice Registered Nurse.

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

(5) Board--The Texas Board of Nursing [~~Board of Nurse Examiners for the State of Texas~~].

(6) - (15) (No change.)

§221.3. Education.

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

(c) Applicants for licensure [~~authorization~~] to practice in an advanced practice role and population focus area [~~specialty~~] recognized by the Board must submit verification of completion of all requirements of an advanced educational program that meets the following criteria:

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

(4) Beginning January 1, 2003, the program of study shall be at the master's [~~graduate~~] degree or higher level.

(5) (No change.)

(d) Applicants for licensure [~~authorization~~] as clinical nurse specialists must submit verification of the following requirements in addition to those specified in subsection (c) of this section:

(1) completion of a master's degree or higher level in the discipline of nursing, and

(2) (No change.)

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

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

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002027

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: June 6, 2010

For further information, please call: (512) 305-6822



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 38. CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES PROGRAM

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§38.1 - 38.12, 38.14, and 38.16, repeal of §38.13, and new §38.13 and §38.15 concerning the Children with Special Health Care Needs (CSHCN) Services Program.

BACKGROUND AND PURPOSE

As authorized by Health and Safety Code, Chapter 35, the CSHCN Services Program provides services to children younger than 21 years of age who have a chronic physical or developmental condition, or to eligible clients with cystic fibrosis regardless of age.

The amendments, repeal, and new rules will strengthen and update information, revise and delete language, and make grammatical corrections to improve flow, accuracy, and consistency in the rules.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 38.1 - 38.14 and §38.16 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The following changes to names and addresses have been made throughout §§38.1 - 38.12, 38.14, and 38.16. References to the department's name have been changed from "Texas Department of Health" to "Department of State Health Services," and the address for all correspondence has been changed from "1100 West 49th Street, Austin, Texas 78756" to "Mail Code 1938, P.O. Box 149347, Austin, Texas 78714-9347."

The proposed amendments to §§38.1, 38.5, 38.11, 38.12, 38.14, and 38.16, the repeal of §38.13, and new §38.13 revise the name of the program as currently used, clarify existing language, and increase readability.

Proposed amendments to §38.2 add new definitions, delete one definition, and update the definitions of other terms used within the rules. The paragraphs have been renumbered accordingly.

Proposed amendments to §38.3 clarify the CSHCN Services Program eligibility requirements.

Proposed amendments to §38.4 modify and update language concerning benefits and limitations and revise references to reimbursements for services.

Proposed amendments to §38.6 revise general requirements for program participation, actions affecting provider enrollment, provider types, requirements for specialty centers, and out-of-state coverage.

Proposed amendments to §38.7 clarify that all freestanding ambulatory surgical centers must apply for program approval and must comply with state licensure requirements and Medicare certification standards.

Proposed amendments to §38.8 revise criteria for approval of inpatient rehabilitation centers.

Proposed amendments to §38.9 clarify existing language, increase readability, and revise the section title concerning cleft-craniofacial services.

Proposed amendments to §38.10 modify existing language and revise specific reimbursement amounts for payment of services.

New §38.15 authorizes the program or the program's designee to recover the cost of services provided to a client from a person who does not pay or from any third party who has a legal obligation to pay other benefits. New §38.15 limits the program's right of recovery to the cost of the covered services provided to treat the client's specific condition or injury that was caused by a liable third party and also authorizes the program or the program's designee to waive all or part of the program's right to recover from a liable third party in certain specific circumstances.

FISCAL NOTE

Jann Melton-Kissel, RN, MBA, Director, Specialized Health Services Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal impact to state or local governments as a result of enforcing and administering the sections as proposed. The amendments, repeal, and new sections are intended to clarify, update, and strengthen the chapter and are not anticipated to be controversial or have significant fiscal impact on the department or local governments.

MICRO-BUSINESS AND SMALL BUSINESS ECONOMIC IMPACT ANALYSIS

Ms. Melton-Kissel has also determined that there will be no adverse effect on small businesses or micro-businesses required to comply with the sections as proposed because neither small businesses nor micro-businesses that are providers of CSHCN Services Program will be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Melton-Kissel has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is improved accuracy and consistency and more accurate interpretation of their intent. In addition, the amendments, repeal, and new sections will allow the program to function more efficiently and effectively.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted by mail to Sandra Owen, RN, MN, Policy Formulation and Health Benefit Team Lead, Purchased Health Services Unit, Mail Code 1938, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; by telephone at (512) 458-7111, extension 3007; or by email to sandra.owen@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

25 TAC §§38.1 - 38.16

STATUTORY AUTHORITY

The amendments and new rules are authorized by Government Code, §531.0055(e), and Health and Safety Code, §§35.003, 35.004, 35.005, 35.006, and 1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The amendments and new rules affect Government Code, Chapter 531, and Health and Safety Code, Chapters 35 and 1001.

§38.1. Purpose and Common Name.

(a) Purpose. The purpose of this chapter is to implement the ~~[Services Program for]~~ Children with Special Health Care Needs (CSHCN) ~~Services Program~~ that is authorized by Health and Safety Code, Chapter 35₂, to provide the following services to eligible children:

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

(b) (No change.)

§38.2. Definitions.

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

(1) (No change.)

(2) Advanced practice registered nurse--A registered nurse approved by the Texas Board of Nursing ~~[Nurse Examiners]~~ to practice as an advanced practice registered nurse, including₂, but not limited to₂, a nurse practitioner, nurse anesthetist, or clinical nurse specialist.

(3) (No change.)

~~[(4) Bona fide resident--A person who:]~~

~~[(A) is physically present within the geographic boundaries of the state;]~~

~~[(B) has an intent to remain within the state;]~~

~~[(C) maintains an abode within the state (i.e., house or apartment, not merely a post office box);]~~

~~[(D) has not come to Texas from another country for the purpose of obtaining medical care, with the intent to return to the person's native country;]~~

~~[(E) does not claim residency in any other state or country; and]~~

~~[(i) is a minor child residing in Texas whose parent(s), managing conservator, guardian of the child's person, or caretaker (with whom the child consistently resides and plans to continue to reside) is a bona fide resident;]~~

~~[(ii) is a person residing in Texas who is the legally dependent spouse of a bona fide resident; or]~~

~~[(iii) is an adult residing in Texas, including an adult whose parent(s), managing conservator, guardian of the adult's person, or caretaker (with whom the adult consistently resides and plans to continue to reside) is a bona fide resident or who is his/her own guardian.]~~

(4) ~~[(5)]~~ Case management services--Case management services include, but are not limited to:

(A) planning, accessing, and coordinating needed health care and related services for children with special health care needs and their families. Case management services are performed in partnership with the child, the child's family, providers, and others involved in the care of the child and are performed as needed to help improve the well-being of the child and the child's family; and

(B) counseling for the child and the child's family about measures to prevent the transmission of AIDS or HIV and the availability in the geographic area of any appropriate health care services, such as mental health care, psychological health care, and social and support services.

(5) ~~[(6)]~~ Child with special health care needs--A person who:

(A) is younger than 21 years of age and who has a chronic physical or developmental condition; or

(B) has cystic fibrosis, regardless of the person's age; and

(C) may have a behavioral or emotional condition that accompanies the person's physical or developmental condition. The term does not include a person who has behavioral or emotional condition without having an accompanying physical or developmental condition.

(6) ~~[(7)]~~ CHIP--The Children's Health Insurance Program administered by the Texas Health and Human Services Commission under Title XXI of the Social Security Act.

(7) ~~[(8)]~~ Chronic developmental condition--A disability manifested during the developmental period for a child with special health care needs which results in impaired intellectual functioning or deficiencies in essential skills, which is expected to continue for a period longer than one year, and which causes a person to need assistance in the major activities of daily living or ~~[and/or]~~ in meeting personal care needs. For the purpose of this chapter, a chronic developmental condition must include physical manifestations and may not be solely a delay in intellectual, mental, behavioral, or ~~[and/or]~~ emotional development.

(8) ~~[(9)]~~ Chronic physical condition--A disease or disabling condition of the body, of a bodily tissue, or of an organ which will last or is expected to last for at least 12 months₂ ~~[:]~~ that results, or without treatment, may result in limits to one or more major life activities₂ ~~[:]~~ and that requires health and related services of a type or

amount beyond those required by children generally. Such a condition may exist with accompanying developmental, mental, behavioral, or emotional conditions, but is not solely a delay in intellectual development or solely a mental, behavioral, or ~~and/or~~ emotional condition.

(9) ~~(40)~~ Claim form--The document approved by the CSHCN Services Program for submitting a ~~the unpaid~~ claim for processing and payment.

(10) ~~(44)~~ Client--A person who has applied for program services and who meets all CSHCN Services Program eligibility requirements and is determined to be eligible for program services.

(A) New client:

(i) a person who has applied to the program for the first time and who is determined to be eligible for program services; or

(ii) a person who has re-applied to the program (after a lapse in eligibility) and who is determined to be eligible for program services.

(B) Ongoing client--A client who currently is not on the program's waiting list.

(C) Waiting list client--A client who currently is on the program's waiting list.

(11) CMS--The Centers for Medicare and Medicaid Services.

(12) (No change.)

(13) Commissioner--The Commissioner of the Department of State Health Services. ~~The Commissioner of Health.~~

(14) (No change.)

(15) Co-pay and co-payment ~~Co-pay/Co-payment~~--A cost-sharing arrangement in which a client pays a specified charge for a specified service. The client is usually responsible for payment at the time the health care service is provided.

(16) - (20) (No change.)

(21) Diagnosis and evaluation services--The process of performing specialized examinations, tests, or ~~and/or~~ procedures to determine whether a CSHCN Services Program applicant for health care benefits has a chronic physical or developmental condition as determined by a physician or dentist participating in the CSHCN Services Program or ~~and/or~~ to help determine whether a waiting list client has an "urgent need for health care benefits"[-] according to the criteria and protocol described in §38.16(e) of this title (relating to Procedures to Address ~~CSHCN Services~~) Program Budget Alignment.

(22) Eligibility date for the CSHCN Services Program health care benefits--The effective date of eligibility for the CSHCN Services Program health care benefits is 15 days prior to the date of receipt of the application[-] except in the following circumstances.

(A) The effective date of eligibility for newborns who are not born prematurely will be the date of birth. Newborn means a child 28 ~~30~~ days old or younger.

(B) The effective date of eligibility for an applicant who is born prematurely shall ~~following traumatic injury will~~ be the day after the applicant has been out of the hospital for 14 consecutive days ~~the acute phase of treatment ends~~, but no earlier than 15 days prior to the date of receipt of the application.

(C) The effective date of eligibility following traumatic injury shall ~~for an applicant that is born prematurely will~~ be the day after the acute phase of treatment ends ~~the applicant has been out of~~

~~the hospital for 14 consecutive days~~, but no earlier than 15 days prior to the date of receipt of the application.

(D) (No change.)

(E) Excluding applications for clients who are known to be ineligible for Medicaid ~~and ~~and/or~~~~ the CHIP due to age, citizenship status, or insurance coverage, all applications must include a determination of eligibility from Medicaid ~~and ~~and/or~~~~ the CHIP. If the CSHCN Services Program application is received without a Medicaid determination, a CHIP determination, or other data or documents ~~data/documents~~ needed to process the application, it will be considered incomplete. The applicant will be notified that the application is incomplete and given 60 days to submit the Medicaid determination, CHIP denial or enrollment, or other missing ~~data or documents~~ ~~data/documents~~ to the CSHCN Services Program. If the application is made complete within the 60-day time limit, the client's eligibility effective date will be established as 15 days prior to the date the CSHCN Services Program application was first received. If the application is made complete more than 60 days after initial receipt, the eligibility effective date will be established as 15 days prior to the date the application was made complete.

(23) - (24) (No change.)

(25) Facility--A hospital, psychiatric hospital, rehabilitation hospital or center, ambulatory surgical center, renal dialysis center, specialty center, or ~~and/or~~ outpatient clinic.

(26) Family--For the purpose of determining family income for program eligibility ~~this chapter~~, the family includes the following persons who live in the same residence:

(A) (No change.)

(B) those related to the applicant as a parent, ~~stepparent, ~~step-parent~~~~ or spouse who have a legal responsibility to support the applicant, or guardians or managing ~~guardians/managing~~ conservators who have a duty to provide food, shelter, education, and medical care for the applicant;

(C) (No change.)

(D) children of a parent, ~~stepparent, ~~step-parent~~~~ or spouse.

(27) (No change.)

(28) Federal Poverty Level (FPL)--The minimum income needed by a family for food, clothing, transportation, shelter, and other necessities in the United States, according to the United States Department of Health and Human Services, or its successor agency or agencies. The FPL varies according to family size and after adjustment for inflation, is published annually in the *Federal Register*.

(29) Federally qualified health center (FQHC)--A federally qualified health center is designated by CMS to provide core medical services to a Medically Underserved Population (MUP).

(30) ~~(28)~~ Financial independence--A state in which a person ~~who~~ currently files his or her own personal U.S. income tax return and is not claimed as a dependent by any other person on his or her U.S. income tax return.

(31) Guardian--A statutory officer appointed under the Texas Probate Code who has a duty to provide food, shelter, education, and medical care for his or her ward.

(32) ~~(29)~~ Health care benefits--CSHCN Services Program benefits consisting of diagnosis and evaluation services, rehabilitation services, medical home care management services,

family support services, transportation related services, and insurance premium payment services.

(33) ~~[(30)]~~ Health insurance and health benefits plan ~~[Health insurance/health benefits plan]~~--A policy or plan, ~~[either]~~ individual, group, or government-sponsored, that an individual purchases or in which an individual participates that provides benefits when medical or ~~[and/or]~~ dental costs are or would be incurred. Sources of health insurance include, but are not limited to, health insurance policies, buy-in programs, health maintenance organizations, preferred provider organizations, employee health welfare plans, union health welfare plans, medical expense reimbursement plans, United States Department of Defense or Department of Veterans Affairs benefit plans, Medicaid, CHIP ~~[the Children's Health Insurance Program (CHIP)]~~, and Medicare. Benefits may be in any form, including, but not limited to, reimbursement based upon cost, cash payment based upon a schedule, or access without charge or at minimal charge to providers of medical or ~~[and/or]~~ dental care. Benefits from a municipal or county hospital, joint municipal-county hospital, county hospital authority, hospital district, county indigent health care programs, or the facilities of a publicly supported medical school shall not constitute health insurance for purposes of this chapter.

(34) ~~[(34)]~~ Household--For the purpose of determining spenddown medical expenses, the ~~[The]~~ living unit in which the applicant resides and which also may include one or more of the following:

- (A) mother;
- (B) father;
- (C) stepparent;
- (D) spouse;
- (E) foster parent(s), managing conservator, or guardian;
- (F) grandparent(s);
- (G) sibling(s);
- (H) stepbrother(s); or
- (I) stepsister(s).

(35) Managing conservator--A person designated by a court to have daily legal responsibility for a child.

(36) Medicaid--A program of medical care authorized by Title XIX of the Social Security Act and the Human Resources Code.

(37) ~~[(32)]~~ Medical home--A respectful partnership between a client, the client's family as appropriate, and the client's primary health care setting. A medical home is family centered health care that is accessible, continuous, comprehensive, coordinated, compassionate, and culturally competent. A medical home provides primary care that includes [a licensed medical professional who accepts responsibility for the provision and/or coordination of primary,] preventive care, care coordination, and appropriate referral and collaboration with specialist and other service providers as required [- and/or specialty care for a client, and coordination of care with other community services providers].

(38) Medicare--A federal program that provides medical care for people age 65 or older and the disabled as authorized by Title XVIII of the Social Security Act.

(39) ~~[(33)]~~ Natural home--The home in which a person lives that is either the residence of his or her [his/her] parent(s), foster parent(s) or guardian [guardian(s)], or extended family member(s), or the home in the community where the person has chosen to live, alone or with other persons. A natural home may utilize natural support

systems such as family, friends, co-workers, and services available to the general population as they are available.

(40) ~~[(34)]~~ Other benefit--A benefit, other than a benefit provided under this chapter, to which a person is entitled for payment of the costs of services included in the scope of coverage of the CSHCN Services Program including, but not limited to, benefits available from:

- (A) an insurance policy, group health plan, health maintenance organization, or prepaid medical or dental care plan;
- (B) home, auto, or other liability insurance;
- (C) Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. §§1395 *et seq.*, 1396 *et seq.*, and 1397aa *et seq.*), as amended;
- (D) the United States Department of Veterans Affairs;
- (E) the United States Department of Defense;
- (F) workers' compensation or any other compulsory employers' insurance program;
- (G) a public program created by federal or state law or under the authority of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, a county indigent health care program, or the facilities of a publicly supported medical school; or

(H) a cause of action for the cost of care, including medical care, dental care, facility care, and medical supplies, required for a person applying for or receiving services from the department[-] or a settlement or judgment based on the cause of action[-] if the expenses are related to the need for services provided under this chapter.

(41) Otologist--A physician whose specialty is diseases of the ear.

(42) ~~[(35)]~~ Permanency planning--A planning process undertaken for children with chronic illness or developmental disabilities who reside in institutions or are at risk of institutional placement, with the explicit goal of securing a permanent living arrangement that enhances the child's growth and development, which is based on the philosophy that all children belong in families and need permanent family relationships. Permanency planning is directed toward securing: a consistent, nurturing environment, [-] an enduring, positive adult relationship(s), [-] and a specific person who will be an advocate for the child throughout the child's life. Permanency planning provides supports to enable families to nurture their children, [-] to reunite with their children when they have been placed outside the home, [-] and to place their children in family environments.

(43) ~~[(36)]~~ Person--An individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(44) ~~[(37)]~~ Physician--A person licensed by the Texas [State Board of] Medical Board [Examiners] to practice medicine in this state.

(45) Physician assistant--A person licensed as a physician assistant by the Texas Physician Assistant Board.

(46) ~~[(38)]~~ Prematurity or born prematurely [Prematurity/born prematurely]--A child born at less than 36 weeks gestational age and hospitalized since birth.

(47) ~~[(39)]~~ Program--The [services program for] Children with Special Health Care Needs (CSHCN) Services Program.

(48) [(40)] Provider--A person or ~~and/or~~ facility as defined in §38.6 of this title (relating to Providers) that delivers services purchased by the CSHCN Services Program for the purpose of implementing the Act.

(49) [(41)] Rehabilitation services--The process of the physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury which includes the following acute and chronic or rehabilitative ~~chronic/rehabilitative~~ services:

(A) facility care, medical and dental care, and occupational, speech, and physical therapies;

(B) the provision of medications, braces, orthotic and prosthetic devices, durable medical equipment, and other medical supplies; and

(C) other services specified in this chapter.

(50) [(42)] Respite care--A service provided on a short-term basis for the purpose of relief to the primary care giver in providing care to individuals with disabilities. Respite services can be provided in either in-home or out-of-home settings on a planned basis or in response to a crisis in the family where a temporary caregiver is needed.

(51) Rural health clinic--A rural health clinic is designated by CMS to provide core medical services in a Medically Underserved Area (MUA).

(52) [(43)] Routine child care--Child care for a child who needs supervision while the parent or guardian ~~parent/guardian~~ is at work, in school, or in job training.

(53) [(44)] Services--The care, activities, and supplies provided under the Act, including but not limited to, both acute and chronic or rehabilitative ~~chronic/rehabilitative~~ medical care, dental care, facility care, medications, durable medical equipment, medical supplies, occupational, physical, and speech therapies, family support services, case management services, and other care specified by program rules.

(54) [(45)] Social service organization--For purposes of this chapter, a for-profit or nonprofit corporation or other entity, not including individual persons, that provides funds for travel, meal, lodging, and family supports expenses in advance to enable CSHCN Services Program clients to obtain program services.

(55) [(46)] Specialty center--A facility and staff that meet the CSHCN Services Program minimum standards established in this chapter and are designated for use by CSHCN Services Program clients as part of the comprehensive services for a specific medical condition.

(56) [(47)] Spenddown--Financial eligibility achieved when household income exceeds 200% of the FPL ~~[federal poverty level,]~~ if the applicant's family can document its responsibility for household medical bills that are equal to or greater than the amount in excess of the 200% level.

(57) [(48)] State--The State of Texas.

(58) Subrogation--Assumption by third party, such as a second creditor or an insurance company, of another person's legal right to collect a debt or damages.

(59) [(49)] Supplemental Security Income Program (SSI)--Title XVI of the Social Security Act which provides for payments to individuals (including children under age 18) who are disabled and have limited income and resources.

(60) [(50)] Support--The contribution of money or services necessary for a person's maintenance, including, but not limited to, food, clothing, shelter, transportation, and health care.

(61) Texas resident--A person who:

(A) is physically present within the geographic boundaries of the state;

(B) has an intent to remain within the state;

(C) maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(D) has not come to Texas from another country for the purpose of obtaining medical care with the intent to return to the person's native country;

(E) does not claim residency in any other state or country; and

(i) is a minor child residing in Texas whose parent(s), managing conservator, guardian of the child's person, or caretaker (with whom the child consistently resides and plans to continue to reside) is a Texas resident;

(ii) is a person residing in Texas who is the legally dependent spouse of a Texas resident; or

(iii) is an adult residing in Texas, including an adult whose parent(s), managing conservator, guardian of the adult's person, or caretaker (with whom the adult consistently resides and plans to continue to reside) is a Texas resident or who is his or her own guardian.

(62) [(51)] Treatment plan--The plan of care for the client (time and treatment specific) as certified by and implemented under the supervision of a physician or other practitioner ~~participating~~ in the program ~~[CSHCN Services Program]~~.

(63) [(52)] United States Public Health Service (USPHS) price--The average manufacturer price for a drug in the preceding calendar quarter under Title XIX of the Social Security Act, reduced by the rebate percentage, as authorized by the Veterans Health Care Act of 1992 (P.L. 102-585, November 4, 1992).

(64) [(53)] Urgent need for health care benefits--A client need that fits the criteria and protocol described in §38.16(e) of this title.

(65) Ward--An individual placed under the protection of a guardian, or a person who by reason of incapacity is under the protection of a court either directly or through a guardian appointed by the court.

§38.3. *Eligibility for Services.*

(a) Eligibility for health care benefits. In order to be determined eligible for program ~~[CSHCN Services Program]~~ health care benefits, applicants must meet the medical, financial, and other criteria in this section.

(1) Medical criteria. At least annually, a physician or dentist must certify that the person meets the definition of "child with special health care needs" as defined by §38.2(5) ~~[§38.2(6)]~~ of this title (relating to Definitions). The medical criteria certification must be based upon a physical examination conducted within the 12 months immediately preceding the date of certification. The physician or dentist must document the medical diagnosis code and descriptor from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM), or its successor, for the person's primary diagnosis that meets the medical criteria certification definition and for each of the person's other medical conditions for statistical and referral purposes. To facilitate application to the program ~~[CSHCN Services Program]~~ for

certain applicants, the program [CSHCN Services Program] Medical Director or Assistant Medical Director may accept written documentation of medical criteria certification submitted by a physician or dentist who is licensed to practice in a state or jurisdiction of the United States of America other than Texas. The program [CSHCN Services Program] does not reimburse for written documentation of medical criteria certification. If a physician or dentist requests coverage of diagnosis and evaluation services to determine if the person meets the definition of a "child with special health care needs"[~~;~~] and the person meets all other eligibility criteria for health care benefits, then the person may be given up to 60 days of program coverage for diagnosis and evaluation services only. Only program [CSHCN Services Program participating] providers as specified in §38.6 of this title (relating to Providers), may be reimbursed for services as defined in §38.2 of this title (~~relating to Definitions~~).

(2) Financial criteria. Financial criteria are determined every six months [~~;~~] or as directed by statutory requirements. Financial criteria are based upon the same determinations of income, family size, and disregards as the CHIP. Premiums paid for health insurance may be included as a disregard. All families must verify their income and disregards, if applicable.

(A) (No change.)

(B) Applications to Medicaid and the Supplemental Security Income (SSI) programs.

(i) If actual or projected program [CSHCN Services Program] expenditures for an ongoing client currently not eligible for Medicaid exceed \$2,000 per year[~~;~~] and the client's age and citizenship status meet Medicaid eligibility criteria, the client shall be required to apply for any applicable Medicaid programs and, if eligible, to participate in those programs in order to remain eligible for further program [CSHCN Services Program] benefits. Within 60 days of the date of the notification letter, the client must submit to the program [CSHCN Services Program] documentation of an eligibility determination from Medicaid. During this 60-day period, program [CSHCN Services Program] coverage will continue. If the client does not provide documentation of an eligibility determination from Medicaid within the 60-day time limit, program [CSHCN Services Program] coverage shall be terminated and may not be reinstated unless an eligibility determination is received. The program may grant the client a 30-day extension to obtain the determination.

(ii) The program [CSHCN Services Program] also may require an ongoing client for whom actual or projected expenditures exceed \$2,000 per year to apply for the SSI program[~~;~~] and, if eligible, to participate in that program in order to remain eligible for further program [CSHCN Services Program] benefits. Within 60 days of the date of the notification letter, the client must submit to the program [CSHCN Services Program] verification of a timely and complete application to SSI. During this 60-day period, program [CSHCN Services Program] coverage will continue. If the client does not provide this verification within the 60-day time limit, program [CSHCN Services Program] coverage may be terminated. With verification of an application to SSI, the program may continue coverage[~~;~~] pending receipt of an SSI eligibility determination.

(3) Health insurance.

(A) All health insurance coverage insuring the applicant and [~~and/or~~] family must be listed on the application. If insurance coverage was effective prior to program [CSHCN Services Program] eligibility, such coverage must be kept in force. Noncompliance with this requirement may result in the termination of program [CSHCN Services Program] benefits. If insurance cannot be maintained, the applicant or parent, guardian, or managing conservator [~~par-~~

ent/guardian/managing conservator] must, upon request, provide to the program [CSHCN Services Program] proof of:

(i) - (ii) (No change.)

(iii) exhaustion of the right to continue group insurance coverage as provided under federal or [~~and/or~~] state law; or

(iv) (No change.)

(B) Applicants or clients who may be eligible for [~~If the applicant/client does not have health insurance at the time of application or eligibility renewal, but coverage may be available, including~~] coverage under Medicare, Medicaid, or CHIP [~~;~~ the applicant/client that is not ineligible for such coverage] by reason of [~~age,~~] citizenship, [~~or~~] residency status, age, or medical condition must apply for coverage. Proof of [~~and receive an~~] eligibility determination must be received within 60 days of the date of notification by the program. With verification of an application to Medicare, Medicaid, CHIP, or an available health insurance plan, the program may extend this deadline[~~;~~] pending receipt of an insurance eligibility determination. If the applicant or client [~~applicant/client~~] is eligible for any [~~other~~] health insurance or buy-in program, the applicant or client [~~applicant/client~~] must be enrolled. Such insurance must be kept in force as though it were effective prior to program [CSHCN Services Program] eligibility.

(C) The program [CSHCN Services Program] will assist in determining possible eligibility for insurance and may provide program [CSHCN Services Program] benefits for ongoing clients during insurance application, enrollment, or [~~and/or~~] limited or excluded coverage periods.

(D) Before canceling, terminating, or discontinuing existing health insurance[~~;~~] or electing not to enroll a client in available health insurance, including canceling, terminating, discontinuing, or not enrolling in CHIP, the parent, guardian, or managing conservator [~~parent/guardian/managing conservator~~] must notify the program [CSHCN Services Program] 30 days prior to cancellation, termination, discontinuance, or end of the enrollment period. When the program [CSHCN Services Program] provides assistance in keeping or acquiring health insurance, the parent, guardian, or managing conservator [~~parent/guardian/managing conservator~~] must maintain or enroll in the health insurance.

(4) (No change.)

(5) Residency. The applicant must be a Texas resident. [~~bona fide resident of the State of Texas.~~]

(6) Application.

(A) Applications are available to anyone seeking assistance from the program [CSHCN Services Program]. To be considered by the program [CSHCN Services Program], the application must be made on forms currently in use.

(B) A person is considered to be an applicant from the time that the program [CSHCN Services Program] receives an application. The program [CSHCN Services Program] will respond in writing regarding eligibility status within 30 working days after the completed application is received. Applications will be considered:

(i) denied[~~;~~] if eligibility requirements are not met;

(ii) incomplete [~~;~~] if required information that includes a CHIP, Medicaid, or SSI determination or any other data and document(s) [~~data/document~~] needed to process the application is not provided[~~;~~] or if an outdated form is submitted; or

(iii) approved[~~;~~] if all criteria are met.

(C) The denial of any application submitted to the program [CSHCN Services Program] shall be in writing and shall include the reason(s) for such denial. The applicant has the right of administrative review and a fair hearing as set out in §38.13 of this title (relating to Right of Appeal).

(D) Any person has the right to reapply for program [CSHCN Services Program] coverage at any time or whenever the person's situation or condition changes.

(7) Verification of information.

(A) The program [CSHCN Services Program] shall make the final determination on a person's eligibility using the information provided with the application. The program [CSHCN Services Program] may request verification of any information provided by the applicant to establish eligibility.

(B) The program [CSHCN Services Program] shall verify selected information on the application. Documentation of date of birth, residency, income, and income disregards shall be required. The program [CSHCN Services Program] shall notify the applicant and family [applicant/family] in writing when specific documentation is required. It is the responsibility of the applicant and family [applicant's/family's responsibility] to provide the required information.

(C) Those applicants or clients [applicants/clients] financially eligible for CHIP, Medicaid, or other programs with eligibility income guidelines that meet the program's [CSHCN Services Program's] eligibility income guidelines, and who also meet the program [CSHCN Services Program's] age and residency requirements, will be considered financially eligible. The applicant, client, or family [applicant/client/family] must notify the program [CSHCN Services Program], if the applicant or client [applicant/client] is no longer eligible for such programs.

(8) Determination of continuing eligibility for health care benefits. Financial criteria for eligibility for health care benefits must be re-established every six months[-] or as directed by statutory requirements. Medical criteria must be re-established at least annually (i.e., within 365 days from the first day of the client's current eligibility period[-] or within 366 days during a leap year). Ongoing clients for health care benefits will be notified of program [CSHCN Services Program] deadlines for re-establishment of eligibility. If an ongoing client for health care benefits does not meet program [CSHCN Services Program] deadlines for submitting information required for the determination of continuing eligibility, the client's eligibility for health care benefits will end. If the then former client re-applies to the program [CSHCN Services Program] after such lapse in eligibility and is determined eligible for health care benefits, the former client will be considered a new client. If the program [CSHCN Services Program] has a waiting list for health care benefits, the new client will be placed on the waiting list in order according to the date and time [date/time] the client is determined eligible for health care benefits.

(b) Eligibility for case management services. The program [CSHCN Services Program] may provide or [and/or] reimburse for case management services to persons in need of such services who are Texas [bona fide] residents and who are determined not to have another primary provider or [and/or] funding source for such services. The program's case management services are focused on individuals (and their families) who are eligible, seeking eligibility, or potentially seeking eligibility for the program's health care benefits (this includes clients who are on the waiting list for health care benefits). However, the program may offer and provide case management services to individuals (and their families) who are not [neither] eligible or not [nor] seeking eligibility for the program's health care benefits.

§38.4. Covered Services.

(a) Introduction. The program [CSHCN Services Program] provides no direct medical services, but reimburses for services rendered by program [CSHCN Services Program participating] providers or [and/or] contractors. Clients must receive services as close to their home communities as possible[-] unless program [CSHCN Services Program] contracts or policies require treatment at specific facilities or specialty centers or [and/or] the clients' conditions require specific specialty care.

(b) Types of service.

(1) Early identification. The program [CSHCN Services Program] may conduct outreach activities to identify children for program enrollment, increase their access to care, and help them use services appropriately. Outreach services may include, but are not limited to:

(A) [CSHCN Services Program] promotion of the program to the general public[-] or targeted to potential clients and providers;

(B) - (C) (No change.)

(D) integration with programs which screen for or provide treatment of newborn congenital anomalies or [and/or] other specialty care; and

(E) links with community, regional, or [and/or] school-based clinics to identify, assess needs, and provide appropriate resources for children with special health care needs.

(2) Diagnosis and evaluation services. These services may [May] be covered for the purpose of determining whether an [a CSHCN Services Program] applicant [for health care benefits] meets the program [CSHCN Services Program] definition of a child with special health care needs in order to receive health care benefits. Diagnosis and evaluation services must be prior authorized and coverage is limited in duration. If a physician or dentist requests coverage of diagnosis and evaluation services to determine if the applicant [child/applicant] meets the definition of a "child with special health care needs[-]" and the applicant meets all other eligibility criteria, then the applicant may be given up to 60 days of program coverage for diagnosis and evaluation services only. The program medical director or other designated medical staff may prior authorize limited coverage of diagnosis and evaluation services for waiting list clients if needed to help determine "urgent need for health care benefits" as described in §38.16(e) of this title (relating to Procedures to Address [CSHCN Services] Program Budget Alignment). Only program [CSHCN Services Program participating] providers may be reimbursed for diagnosis and evaluation services.

(3) Rehabilitation services. Rehabilitation services means a process of physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury which includes the following acute and chronic or rehabilitative [chronic/rehabilitative] services: facility care, medical and dental care, occupational, speech, and physical therapies, the provision of medications, braces, orthotic and prosthetic devices, durable medical equipment, other medical supplies, and other services specified in this chapter. To be eligible for program [CSHCN Services Program] reimbursement, treatment must be for a client and must have been prescribed by a provider in compliance with all applicable laws and regulations of the State of Texas. Services may be limited[-] and the availability of certain services described in the following subparagraphs is contingent upon implementation of automation procedures and systems.

(A) Medical assessment and treatment. Physicians must provide medical assessment and treatment services, including

medically necessary laboratory and radiology studies. ~~Other~~ ~~and other~~ practitioners must be licensed by the State of Texas, enrolled as ~~participating~~ providers in the ~~program~~ [CSHCN Services Program], and practicing within the scope of their respective licenses or registrations.

(B) Outpatient mental health services. Outpatient mental health services are limited to no more than 30 encounters in a calendar year by all professionals licensed to provide mental or behavioral ~~mental/behavioral~~ health services~~;~~ including psychiatrists, psychologists, licensed clinical social workers (LCSW), licensed marriage and family therapists, and licensed professional counselors~~;~~ per eligible client per calendar year. Coverage includes, but is not limited to psychological or neuropsychological testing, psychotherapy, and ~~psychoanalysis;~~ counseling~~;~~ and ~~narcosynthesis~~.

(C) Preventive and therapeutic dental services (including oral and maxillofacial ~~oral/maxillofacial~~ surgery). Preventive and therapeutic dental services must be provided by licensed dentists enrolled to participate in the program ~~[CSHCN Services Program]~~. Coverage for therapeutic dental services, including prosthetics and oral and maxillofacial ~~oral/maxillofacial~~ surgery, follows the Texas Medicaid program guidelines. Orthodontic care must be prior authorized and may be provided only for CSHCN eligible clients with diagnoses of cleft-craniofacial ~~cleft/eraniofacial~~ abnormalities, dentofacial abnormalities, or ~~and/or~~ late effects of fractures of the skull and face bones.

(D) Podiatric services. Podiatric services must be provided by licensed podiatrists enrolled to participate in the program ~~[CSHCN Services Program]~~. Coverage is limited to the medically necessary treatment of foot and ankle conditions and follows the Texas Medicaid program guidelines. Supportive devices, such as molds, in-lays, shoes, or supports, must comply with coverage limitations for foot orthoses.

(E) Treatment in program ~~[CSHCN Services Program]~~ participating facilities. Non-emergency hospital care must be provided in facilities that are enrolled as program ~~[CSHCN Services Program]~~ ~~participating~~ providers. The length of stay is limited according to diagnosis, procedures required, and the client's condition.

(i) Inpatient hospital care, coverage limitations, and inpatient psychiatric care.

(I) Inpatient hospital care. Coverage ~~[is limited to 60 days per calendar year for medically necessary care, and]~~ excludes the following:

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

(-c-) private duty nursing or attendant ~~nursing/attendant~~ care.

(II) Coverage limitations. Coverage is limited to 60 days per calendar year except for stem cell transplantation, for which coverage is available for 120 days per calendar year.

(III) ~~(H)~~ Inpatient psychiatric care. Coverage is limited to inpatient assessment and crisis stabilization and is to be followed by referral to an appropriate public or private mental health program. Admission must be prior authorized. Services include those medically necessary and furnished by a Medicaid psychiatric hospital or facility ~~hospital/facility~~ under the direction of a psychiatrist.

(ii) Inpatient rehabilitation care. Medically necessary inpatient rehabilitation care is limited to an initial admission not to exceed 30 days~~;~~ based on the functional status and potential of the client as certified by a physician participating in the program ~~[CSHCN Services Program]~~. Services beyond the initial 30 days may be approved by the program ~~[CSHCN Services Program]~~ based upon the client's medical condition, plan of treatment, and progress. Payment

for inpatient rehabilitation care is limited to 90 days during a calendar year.

(iii) Ambulatory surgical care. Ambulatory surgical care is limited to the medically necessary treatment of a client and may be performed only in program ~~[CSHCN Services Program]~~ approved ambulatory surgical centers as defined in §38.7 of this title (relating to Ambulatory Surgical Care Facilities).

(iv) Emergency care. Care including, but not limited to hospital emergency departments, ancillary, and physician services, is limited to medical conditions manifested by acute symptoms of sufficient severity (including severe pain) such that a prudent person with average knowledge of health and medicine could reasonably expect that the absence of immediate medical care could result in placing the client's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. If a client is admitted to a non-participating program ~~[CSHCN Services Program]~~ hospital provider following care in that provider's emergency room ~~;~~ and the admitting facility declines to enroll or does not qualify as a program ~~[CSHCN Services Program]~~ provider, the client must be discharged or transferred to a program ~~[participating CSHCN Services Program]~~ provider as soon as the client's medical condition permits. All providers must enroll in order to receive reimbursement.

(v) Care for renal disease. Renal dialysis is limited to the treatment of acute renal disease or chronic (end stage) renal disease through a renal dialysis facility and includes, but is not limited to dialysis, laboratory services, drugs and supplies, dec clotting shunts, on-site physician services, and appropriate access surgery. Renal transplants may be covered in approved renal transplant centers if the projected cost of the transplant and follow-up care is less than that of continuing renal dialysis. Estimated cost of the renal transplant over a one-year period versus the cost of renal dialysis for one year at their facility must be documented. For each client 18 years of age and older, the transplant team must also provide a plan of care to be implemented after the client reaches 21 years of age and is no longer eligible for program services. Renal transplants must be prior authorized, and approval is subject to the availability of funds.

(F) (No change.)

(G) Medications. Outpatient medications available through pharmacy providers, including over-the-counter products, must be prescribed by practitioners licensed to do so. ~~[Payment shall be made only after delivery of the medications.]~~

(H) Nutrition services and nutritional products, excluding hyperalimentation and total parenteral nutrition ~~hyperalimentation/total parenteral nutrition~~ (TPN).

(i) (No change.)

(ii) Nutritional products. Nutritional products, including over-the-counter products, are limited to those covered by the program ~~[CSHCN Services Program]~~ and prescribed by a practitioner licensed to do so, for the treatment of an identified metabolic disorder or other medical condition and serving as a medically necessary therapeutic agent for life and health~~;~~ or when part or all nutritional intake is through a tube.

(I) Hyperalimentation and Total Parenteral Nutrition (TPN) Services. ~~[Hyperalimentation/Total Parenteral Nutrition (TPN) services. A package of medically necessary services provided on a daily basis when oral intake cannot maintain adequate nutrition. TPN services]~~ include, but are not limited to solutions and additives, supplies and equipment, customary and routine laboratory work, enteral supplies, and nursing visits. These services may be provided on a daily basis when oral intake cannot maintain adequate

nutrition. Covered services must be reasonable, medically necessary, appropriate, and prescribed by a practitioner licensed to do so.

(J) Medical foods. Coverage for medical foods is limited to the treatment of inborn metabolic disorders. Treatment for any other condition with medical foods requires documentation of medical necessity and prior authorization. ~~[Medical foods are approved products listed in enrolled providers' catalogs and are lacking in the compounds that cause complications of a covered metabolic disorder.]~~

(K) Durable medical equipment. All equipment must be prescribed by a practitioner licensed to do so. Some equipment may be ordered from a specific supplier ~~[supplied on a contract basis, and therefore, shall be ordered from a specific supplier].~~

(L) - (M) (No change.)

(N) Speech-language pathology and audiology ~~[pathology/audiology].~~ Speech-language pathology and audiology services medically necessary for the treatment of a client must be prescribed by a practitioner licensed to do so and provided by a speech-language pathologist or audiologist licensed by the State of Texas. Program [CSHCN Services Program] coverage of speech-language pathology and audiology services may be limited to certain conditions, by type of service, by age, by the client's medical status, and whether the client is eligible for services for which a school district is legally responsible.

(O) Hearing services include, but are not limited to, hearing screening, audiological assessment, otological examination, hearing aid evaluation, hearing aid devices, hearing aid fitting and repair, hearing aid batteries and supplies, and ear molds. ~~[Audiological testing, hearing exams, and amplification devices. Services for clients under 21 years of age are coordinated through the Program for Amplification for Children of Texas (PACT). For clients 21 years of age and older and those ineligible for the PACT, covered services are the same as those available through the PACT.]~~

(P) Occupational and physical therapy. Occupational and physical therapy medically necessary for the treatment of a client must be prescribed by a practitioner licensed to do so and provided by a therapist licensed by the State of Texas. Program [CSHCN Services Program] coverage of physical and occupational therapy may be limited to certain conditions, by type of service, by age, by the client's medical status, and whether the client [child] is eligible for services for which a school district is legally responsible.

(Q) Certified respiratory care practitioner services. Respiratory therapy medically necessary for the treatment of a client must be prescribed by a practitioner licensed to do so and provided by a certified respiratory care practitioner. Program [CSHCN Services Program] coverage of respiratory therapy may be limited to certain conditions, by type of service, by age, by the client's medical status, and whether the client [child] is eligible for services for which a school district is legally responsible.

(R) Home health nursing services. Home health nursing services must be medically necessary, be prescribed by a physician, and be provided only by a licensed and certified home and community support services agency participating in the program. ~~[CSHCN Services Program.]~~ Home health nursing services are limited to 200 hours per client per calendar year. Up to 200 additional hours of service per client per calendar year may be approved with documented justification of need and cost effectiveness.

(S) Hospice care. Hospice care includes palliative care for clients with a presumed life expectancy of six months or less during the last weeks and months before death. Services apply to care for the hospice terminal diagnosis condition or illnesses. Treatment for

conditions unrelated to the terminal condition or illnesses is unaffected. Hospice care must be prescribed by a practitioner licensed to do so who also is enrolled as a program ~~[CSHCN Services Program] provider.~~

(4) Care management.

(A) Medical home. Each program ~~[CSHCN Services Program]~~ client should receive care in the context of a medical home.

(i) Comprehensive, coordinated health care of infants, children, and adolescents should encompass the following services:

(I) provision of preventive care, including but not limited to, immunizations, ~~[;]~~ growth and development assessments, ~~[;]~~ appropriate screening health care supervision, ~~[;]~~ client and parental counseling about health care supervision, ~~[;]~~ and client and parental counseling about health and psychological issues;

(II) - (IV) (No change.)

(V) interaction with school and community agencies to assure that the special health needs of the client are addressed; ~~[and]~~

(VI) guidance and assistance needed to make the transition to all aspects of adult life, including adult health care, work, and independence; and

(VII) [(VI)] maintenance of a central record and database containing all pertinent medical information about the client [;] including information about hospitalizations.

(ii) (No change.)

(B) Case management. Case management services may be made available to program clients through public health regional offices or other resources to assist clients and their families in obtaining adequate and appropriate services to meet the client's health and related services needs. The program will make available case management as needed or desired ~~[needed/desired]~~ to all clients who are eligible for health care benefits (includes clients who are on the waiting list for health care benefits). The program also may make available case management services to clients who are not eligible for the program's health care benefits.

(5) Family support services. Family support services include disability-related support, resources, or other assistance and may be provided to the family of a client with special health care needs.

(A) Eligibility. A client is eligible to receive family support services if:

(i) the client is not receiving services from a Medicaid ~~[home and community-based]~~ waiver program, and the family support needs cannot be met by services ~~[requested service does not duplicate services received]~~ from other family support programs, such as the Department of Aging and Disability Services or the In-Home and Family Support Program; ~~[program, the Primary Home Care Program, or the Medically Dependent Children's Program;]~~ and

(ii) (No change.)

(B) Processing and evaluation of requests.

(i) Families of clients indicate their need for family support services by completing and signing an approved request form.

(ii) Requests ~~[In each public health region or other designated subdivision of the state, requests]~~ for family support services are processed in chronological order by the date of the request.

(iii) All requests for family support services must be prior authorized (approved by the program [CSHCN Services Program] prior to delivery).

(iv) While there is a waiting list for health care benefits, limitations in reimbursement or [and/or] prior authorization may be instituted as provided in §38.16 of this title.

(v) Some services or items may require a written statement from a physician, physical therapist, occupational therapist, or [and/or] other healthcare professional to establish the disability-related nature of the request.

(vi) (No change.)

(vii) Persons requesting assistance are responsible for collaborating with their case managers to obtain information as necessary so that an accurate determination can be made in a timely manner.

(viii) Families shall be notified in writing of the outcome of their requests for family support services.

(ix) Families have the right to appeal a denial or partial approval [~~decision~~] as described in §38.13 of this title (relating to Right of Appeal).

(C) Service plan and cost allowances.

(i) The case manager and the client or family must develop a family assessment and service plan and complete a Family Support Services request packet to request a prior authorization for family support services.

~~{(i) In order to obtain prior authorization for family support services, the case manager and the client/family must develop a family assessment and service plan.}~~

(ii) The program [CSHCN Services Program] may establish annual cost allowances based upon the client's or family's [client's/family's] level of assessed need for family support services[.] not to exceed:

(I) lifetime benefit [~~one-time assistance~~] of up to \$3,600 per eligible client for minor home modifications [~~remodeling~~]; and

(II) annual benefit [~~assistance~~] of up to \$3,600 per calendar year per eligible client for [to purchase other] allowable family support services. [~~This limit may increase to no more than \$7,200 for the purchase of vehicle lifts and modifications.~~]

(-a-) The annual benefit may increase to no more than \$7,200 per eligible client for the purchase of vehicle lifts and modifications;

(-b-) The lifetime benefit for minor home modifications and the annual benefit may be used in the same calendar year.

(iii) (No change.)

(iv) Reimbursement [~~Disbursement of assistance~~]:

(I) may be made to the family or to the vendor enrolled as a program provider; and [~~in a lump sum or on a periodic basis;~~]

(II) may be reduced by the amount of a cost-sharing requirement, if applicable. [~~made to the family or to the vendor enrolled as a CSHCN Services Program provider; and~~]

~~{(III) may be reduced by the amount of a cost-sharing requirement, if applicable.}~~

(v) Reimbursement rates for respite providers are established by the client or family [~~client/family~~] and the selected provider in collaboration with the case manager.

(vi) The annual family assessment and service plan may be amended at any time, but must [~~will~~] be reevaluated by the client or family [~~client/family~~] and case manager at least annually [~~to coincide with the client's reapplication for the CSHCN Services Program~~].

(D) Allowable services.

(i) Family support services for program [CSHCN Services Program] clients and their families include those allowable services and items that:

(I) - (II) (No change.)

(III) directly support the client's living in his or her [~~his/her~~] natural home and participating in family life and community activities.

(ii) (No change.)

(iii) Allowable services include:

(I) (No change.)

(II) specialized child care costs for a client that are expenses directly related to the client's disability and special needs that are beyond the scope of community-based child care centers [~~in excess of the prevailing rate for routine child care~~], including specialized training for the child care provider;

(III) counseling, [~~or~~] training programs, or conferences to obtain specific skills or knowledge related to the client's care that assists family members or caregiver(s) in maintaining the client in their home and to increase their knowledge and ability to care for the client [~~services that assist the client/family, including parent or family stipends to attend education or training conferences~~];

(IV) minor home modifications such as [~~remodeling, limited to the purchase and~~] installation of a ramp [~~ramps~~], widening of doorways, bathroom modifications [~~the modification of bathroom facilities, kitchen modifications~~], and other home modifications to increase accessibility and safety;

(V) vehicle lifts and modifications such as wheelchair [~~consistent with those available through the Department of Assistive and Rehabilitative Services (DARS), limited to~~] lifts or ramps, wheelchair tie-downs, occupant restraints, accessories, modifications [~~accessories/modifications~~] such as raising roofs or doors if necessary for lift installation or usage, hand controls, and repairs of covered modifications not related to inappropriate handling or misuse of equipment and not covered by other resources;

(VI) specialized equipment, including porch or stair [~~porch/stair~~] lifts, air purification systems or air conditioners, positioning equipment, bath aids, supplies prescribed by licensed practitioners that are not covered through other systems, and other non-medical disability-related equipment that assists with family activities, promotes the client's self-reliance, or otherwise supports the family;

(VII) other disability-related services that support permanency planning, independence, or [~~and/or~~] participation in family life and integrated or inclusive [~~integrated/inclusive~~] community activities.

(E) Unallowable services. Family support funds may not be used to provide those services that do not relate to the client's disability and do not directly support the client's living in his or her [~~his/her~~] natural home and participating in family life and integrated

or inclusive [~~integrated/inclusive~~] community activities. Examples of unallowable services include, but are not limited to:

- (i) (No change.)
- (ii) purchase or lease of vehicles~~[-]~~ or vehicle maintenance and repair;
- (iii) home mortgage or rent expenses~~[-]~~ or basic home maintenance and repair;
- (iv) - (xi) (No change.)
- (xii) services, equipment, or supplies that have been denied by Medicaid, CHIP, or the program [~~CSHCN Services Program~~] because a claim was received after the filing deadline, because insufficient information was submitted, or because an item was considered inappropriate or experimental;
- (xiii) - (xiv) (No change.)
- (xv) school tuition or fees, or ~~equipment, items, or services~~ [~~equipment/items/services~~] that should be provided through the public school system;
- (xvi) - (xvii) (No change.)
- (xviii) computers and software~~[-]~~ unless for use as an assistive technology device or necessary to perform a critical or essential function, such as environmental control~~[-]~~ or written or oral communication, which the client is unable to perform without the computer;
- (xix) services provided by an individual under the age of 18 years or by the client's ~~parent(s), guardian, [parent(s)/guardian(s)]~~ or other member of the client's household;
- (xx) (No change.)

(F) Reduction or termination [~~Reduction/termination~~] of services. Reasons for terminating or reducing family support services may include, but are not limited to:

- (i) the client no longer meets the eligibility criteria for the program [~~CSHCN Services Program~~];
- (ii) (No change.)
- (iii) While there is a waiting list for health care benefits, limitations in reimbursement or [~~and/or~~] prior authorization may be instituted as provided in §38.16 of this title;
- (iv) - (vii) (No change.)
- (viii) the client's designated case manager is unable to locate the client and family [~~client/family~~]; or
- (ix) the family knowingly does not comply with the family assessment and service plan~~[-]~~ in which case the family may also be liable for restitution.

(6) Other types of services. The following services also are available through the program [~~CSHCN Services Program~~].

(A) Ambulance services. Emergency ground, non-emergency ground and air ambulance services are covered for the medically necessary transportation of a client. Non-emergency ambulance transport is covered if the client cannot be transported by any other means without endangering the health or safety of the client~~[-]~~ and when there is a scheduled medical appointment for medically necessary care at the nearest appropriate facility. Transportation by air ambulance is limited to instances when the client's pickup point is inaccessible by land~~[-]~~ or when great distance interferes with immediate admission to the nearest appropriate medical treatment facility. Transports to out-of-locality providers are covered if a local

facility is not adequately equipped to treat the client. Out-of-locality refers to one-way transfers 50 miles or more from point of pickup to point of destination.

(B) Transportation. The program [~~CSHCN Services Program~~] may provide transportation for a client and, if needed, a responsible adult, to and from the nearest medically appropriate facility (in Texas or in the United States 50 or fewer miles from the Texas border) to obtain medically necessary and appropriate health care services that are within the scope of coverage of the program [~~CSHCN Services Program~~] and are provided by a program [~~CSHCN Services Program~~] enrolled provider. The lowest-cost appropriate conveyance should be used. The program [~~CSHCN Services Program~~] shall not assist if transportation is the responsibility of the client's school district or can be obtained through Medicaid. Transportation to out-of-state services located more than 50 miles from the Texas border will not be approved~~[-]~~ except as specified in §38.6(e) of this title (relating to Providers).

(C) Meals and lodging. The program [~~CSHCN Services Program~~] may provide meals and lodging to enable a parent, guardian, or their designee to obtain inpatient or outpatient care for a client at a facility located away from their home. The reason for the inpatient or outpatient visit must be directly related to medically necessary treatment for the client that is provided by program enrolled providers and covered by the program. Meals and lodging associated with travel to services that are provided more than 50 miles from the Texas border will not be approved~~[-]~~ except as specified in §38.6(e) of this title.

(D) Transportation of deceased. The program [~~CSHCN Services Program~~] may provide the following services:

- (i) transportation cost for the remains of a client who expires in a program-approved [~~CSHCN Services Program approved~~] facility while receiving program [~~CSHCN Services Program~~] health care benefits, if the client was not in the family's city of residence in Texas, and the transportation cost of a parent or other person accompanying the remains~~[-]~~ from the facility to the place of burial in Texas that is designated by the parent or other person legally responsible for interment;
- (ii) embalming of the deceased~~[-]~~ if required by law for transportation;
- (iii) a coffin meeting minimum requirements~~[-]~~ if required by law for transportation; and
- (iv) (No change.)

(E) Payment of insurance premiums, coinsurance, co-payments, and [~~and/or~~] deductibles. The program [~~CSHCN Services Program~~] may pay public or private health insurance premiums to maintain or acquire a health benefit plan or other third party coverage for the client, [~~if the parent/foster parent/guardian/managing conservator is financially unable to do so;~~] and if paying for such health insurance can reasonably be expected to be cost effective for the program [~~CSHCN Services Program~~]. The program [~~CSHCN Services Program~~] may pay for coinsurance and deductible amounts when the total amount paid (including all payers) to the provider does not exceed the amount [~~maximum~~] allowed by the program [~~CSHCN Services Program~~] for the covered service. The program [~~CSHCN Services Program~~] may reimburse clients for co-payments paid for covered services. The program will [~~CSHCN Services Program may~~] not pay premiums, deductibles, coinsurance, or co-payments for clients enrolled in CHIP.

(c) Services not covered. Services which are not covered by the program [~~CSHCN Services Program~~] even though they may be

medically necessary for and provided to a client include, but are not limited to:

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

(8) services provided by a nursing home or facility [~~nursing home/facility~~]; and

(9) services provided while the client is in the custody of or incarcerated by any municipal, county, state, or federal governmental entity. Case management or prior approved family support services not provided by the governmental entity[~~s~~] that are needed during the time when a client is transitioning from custody or incarceration into a community living setting[~~s~~] may be covered.

(d) Authorization and prior authorization of selected services. [Service authorization. The CSHCN Services Program reimbursement may require authorization (including prior authorization) of reimbursement for selected services for clients.]

(1) Provider's responsibility. A program [CSHCN Services Program] provider must request services in specific terms on department-prepared forms so that an authorization may be issued and sufficient monies encumbered to cover the cost of the service. If a service is authorized, payment may be made to the provider as long as the service is not covered by a third party resource[~~s~~] and all billing requirements are met. Program authorization should not be considered an absolute guarantee of payment. Once a service is delivered and if the service requires authorization for payment, the authorization request for that service must be submitted within 95 days of the date of service.

(2) Required prior authorization for selected services. At the program's [CSHCN Services Program's] option, selected services may require authorization prior to the delivery of services in order for payment to be made. Prior authorization requests must be submitted prior to the date of service.

(3) While there is a waiting list for health care benefits, limitations in reimbursement or [~~and/or~~] prior authorization may be instituted as provided in §38.16 of this title.

(4) Denied authorization requests are authorization requests which are incomplete, submitted on the wrong form, lack necessary documentation, contain inaccurate information, fail to meet authorization request submission deadlines, [~~and/or~~] are for ineligible persons, services, or providers, or [~~and/or~~] are for clients who do not qualify for the health care benefit requested. Denied authorization requests may be corrected and resubmitted for reconsideration. Authorization [~~However, authorization~~] requests must meet authorization request submission deadlines. Denied [~~If the results of the reconsideration process are unsatisfactory, denied~~] authorization requests may be appealed according to §38.13 of this title [~~(relating to Right of Appeal)~~].

(e) Pilot projects. The program [CSHCN Services Program] may initiate and participate in pilot projects [~~to determine the fiscal impact of changes in eligibility criteria and the types of services provided~~]. New projects are possible only if funds are available in the current fiscal year. All pilot projects are limited to no more than 10% of the fiscal year appropriation.

§38.5. Rights and Responsibilities of a Client's Parents, Foster Parents, Guardian, or Managing Conservator, [~~Parents/Foster Parents/Guardian/Managing Conservator~~] or an [~~the~~] Adult Client.

(a) Rights. A client's parents, foster parents, guardian, or managing conservator, [~~The parent/foster parent/guardian/managing conservator~~] or an [~~the~~] adult client shall have the right to:

(1) (No change.)

(2) choose providers subject to program [CSHCN Services Program] limitations;

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

(5) appeal program [CSHCN Services Program] decisions and receive a response within the deadline as described in §38.13 of this title (relating to Right of Appeal); and

(6) (No change.)

(b) Responsibilities. A client's parents, foster parents, guardian, or managing conservator, [~~The parent/foster parent/guardian/managing conservator~~] or an adult client shall have the responsibility to:

(1) provide accurate medical information to providers and notify all providers of program [CSHCN Services Program] coverage prior to delivery of services;

(2) provide the program [CSHCN Services Program] with accurate information regarding any change of circumstance which might affect eligibility [~~s~~] within 30 days of such change;

(3) receive and utilize services as close to the client's home community as possible, unless program [CSHCN Services Program] contracts, policies, or a referral by a program [CSHCN Services Program] provider requires the use of specific facilities or specialty centers;

(4) reimburse the program [CSHCN Services Program], if payments from health insurance or other benefits are made directly to the client or parent, guardian, or managing conservator [~~parent/guardian/managing conservator~~] for services or equipment purchased by the program [CSHCN Services Program];

(5) consult with the provider regarding authorization of service from the program [CSHCN Services Program] prior to service delivery;

(6) utilize services provided by the program [CSHCN Services Program] appropriately[~~s~~] including keeping appointments and using supplies and equipment judiciously;

(7) utilize health insurance (following all plan guidelines and paying required co-payments), other benefits, and assets[~~s~~] and to inform service providers of same;

(8) notify the program [CSHCN Services Program] of any other benefits, as defined in §38.2 of this title (relating to Definitions), available to the client at the time of application or thereafter[~~s~~] and any lawsuit(s) contemplated or filed concerning the cause of the medical condition for which the program [CSHCN Services Program] has paid for services; and

(9) bear a portion of the expense of medical or dental care[~~s~~] if deemed financially able by the program [CSHCN Services Program]. Items of routine daily living are not covered by the program [CSHCN Services Program].

(c) Nondiscrimination. The department operates in compliance with Title VI, Civil Rights Act of 1964 (Public Law 88-352) and 45 Code of Federal Regulations, Part 80, so that no person will be excluded from participation in[~~s~~] or otherwise subjected to discrimination on the grounds of race, color, or national origin.

§38.6. Providers.

(a) General requirements for participation. The Children with Special Health Care Needs Services (CSHCN) Act, Health and Safety Code, §35.004, requires that [~~authorizes the approval of~~] physicians, dentists, licensed [~~pediatrists,~~] dietitians, facilities, specialty centers,

and other providers be approved to participate in the program [CSHCN Services Program] according to program [its] criteria and procedures.

(1) Providers seeking approval for program [CSHCN Services Program] participation must submit a completed application to the program [CSHCN Services Program] or its designee[-] including a signed provider agreement and all documents requested on the application.

(2) All approved program [CSHCN Services Program] providers must agree to abide by program [CSHCN Services Program] rules and regulations[-] and not to discriminate against clients based on source of payment.

(3) All program [CSHCN Service Program] providers must agree to accept the program-allowed [CSHCN Services Program allowed] amount of payment (regardless of payer) as payment in full for services provided to program [CSHCN Services Program] clients. Providers may collect allowable insurance or health maintenance organization co-payments in accordance with those plan provisions. Providers may not request or accept payment from the client or client's family for completing any program [CSHCN Services Program] forms.

(4) The program [CSHCN Services Program] is the payer of last resort, and program [CSHCN Services Program] providers must agree to utilize all other public or private benefits available to the client[-] including, but not limited to, Medicaid or Medicaid waiver programs, CHIP, or Medicare, and casualty or liability coverage prior to requesting payment from the program [CSHCN Services Program]. Providers must agree to attempt to collect payment from the payer of other benefits. The program [CSHCN Services Program] may pay for certain services for which other benefits may be available but have not been definitively determined. If other benefits become available after the program [CSHCN Services Program] has paid for the services, the program [CSHCN Services Program] shall recover its costs directly from the payer of other benefits or shall request the provider of services to collect payment and reimburse the program [CSHCN Services Program].

(5) Overpayments made on behalf of clients to program [CSHCN Services Program participating] providers must be reimbursed to the program [CSHCN Services Program] refund account by lump sum payment or, at the discretion of the department, in monthly installments or out of current claims due to be paid the provider. All providers must consent to on-site visits and [and/or] audits by program [CSHCN Services Program] staff or its designees.

(6) All approved providers must agree to the following:

(A) maintain and retain all necessary records and claims to fully document the services and supplies provided to a client for full disclosure to the program or its designee;

(B) retain these records and claims for a period of five years from the date of service, until the client's 21st birthday, or until all audit questions, appeal hearings, investigations, litigation, or court cases are resolved, whichever occurs last;

(C) provide unconditionally upon request, free copies of and access to all records pertaining to the services for which claims are submitted to the program or its designees; and

(D) allow the department, the Office of Inspector General (OIG), HHSC, or designees of these organizations access to its premises; and cooperate and assist with any audit or investigation.

(7) [(6)] All program [CSHCN Services Program] providers of services also covered by Medicaid must enroll and remain enrolled as Title XIX Medicaid providers. In order to be reimbursed

by Medicaid as the primary payer, a provider must be enrolled on the date of service. The program [CSHCN Services Program] will not reimburse an enrolled provider for any service covered under Medicaid that was provided to a program [CSHCN Services Program] client eligible for Medicaid at the time of service. If a service covered by the program [CSHCN Services Program] is not covered by Medicaid, the provider of that service is not required to enroll as a Medicaid provider. Any provider excluded by Medicaid for any reason shall be excluded by the program [CSHCN Services Program].

(8) Providers must comply with applicable Medicare standards.

(9) [(7)] If a license or certification is required by law to practice in the State of Texas, the provider must maintain the required license or certification.

(10) [(8)] All providers shall be responsible for the actions of their staff members [of their staffs] who provide program [CSHCN Services Program] services.

(11) [(9)] Any provider may withdraw from program [CSHCN Services Program] participation at any time by so notifying the program [CSHCN Services Program] in writing.

(b) Denial, modification, suspension, and termination of provider enrollment [approval].

(1) The program [CSHCN Services Program] may deny, modify, suspend, or terminate a provider's enrollment [approval to participate] for the following reasons:

(A) (No change.)

(B) submitting false information on the enrollment application;

(C) [(B)] failing to provide and maintain quality services or medically acceptable standards;

(D) [(C)] not adhering to the provider agreement signed at the time of application or renewal for program [CSHCN Services Program] participation;

(E) conviction of any felony;

(F) conviction of any misdemeanor involving moral turpitude;

(G) [(D)] disenrollment as a Medicaid provider; [or]

(H) [(E)] violation of the standards of this chapter; [-]

(I) failure to submit a claim for reimbursement for an extended period of time, as specified by program policy; or

(J) disciplinary action taken against the provider by the licensing authority under which the provider practices in the State of Texas or by the Texas Medicaid Program.

[(2) The CSHCN Services Program may deny or suspend approved provider status based on the CSHCN Services Program's knowledge of disciplinary action taken against the provider by the licensing authority under which the provider practices in the State of Texas or by the Texas Medicaid Program.]

(2) [(3)] Prior to taking an action to deny, modify, suspend, or terminate the enrollment [approval] of a provider, the program [CSHCN Services Program] shall give the provider written notice of an opportunity of appeal in accordance with §38.13 of this title (relating to Right of Appeal). [In addition, a fair hearing is available to any provider for the resolution of conflict between the CSHCN Services Program and the provider.]

(c) Provider types. Approved providers include, but are not limited to:

- (1) advanced practice registered nurses [~~physicians~~];
- (2) ambulance providers [~~dentists~~];
- (3) ambulatory surgical centers [~~advanced practice nurses~~];
- (4) certified home and community support services agencies [~~mental/behavioral health professionals, including psychiatrists, licensed psychologists, licensed clinical social workers, licensed marriage and family therapists, and licensed professional counselors~~];
- (5) certified respiratory care practitioners [~~podiatrists~~];
- (6) dentists [~~hospitals~~];
- (7) dietitians [~~inpatient rehabilitation centers~~];
- (8) family support services providers [~~ambulatory surgical centers~~];
- (9) federally qualified health centers [~~renal dialysis centers~~];
- (10) genetic counselors [~~orthotists and prosthetists~~];
- (11) hearing service professionals [~~pharmacies~~];
- (12) hospice care providers [~~dietitians~~];
- (13) hospitals [~~medical supply and/or equipment companies~~];
- (14) inpatient rehabilitation centers [~~optometrists and opticians~~];
- (15) licensed speech-language pathologists [~~and audiologists~~];
- (16) lodging facilities [~~hearing aid professionals (limited to physicians and those audiologists who are fitters and dispensers and enrolled as Program for Amplification for Children of Texas providers)~~];
- (17) medical supply and equipment companies [~~occupational therapists and physical therapists~~];
- (18) mental and behavioral health professionals including, but not limited to, psychiatrists, licensed psychologists, licensed clinical social workers, licensed marriage and family therapists, and licensed professional counselors [~~certified respiratory care practitioners~~];
- (19) occupational therapists and physical therapists [~~certified home and community support services agencies~~];
- (20) optometrists and opticians [~~hospice care providers~~];
- (21) orthotists and prosthetists [~~ambulance providers~~];
- (22) pharmacies [~~transportation companies or providers~~];
- (23) physicians [~~meal and lodging facilities; and~~];
- (24) physicians assistants; [~~funeral homes.~~]
- (25) podiatrists;
- (26) renal dialysis centers;
- (27) rural health clinics; and
- (28) transportation companies or providers.

(d) Requirements for specialty centers.

(1) The program [CSHCN Services Program] may accept as [~~participating~~] providers diagnostically specific specialty centers,

such as bone marrow or other transplant centers, approved under the credentialing or [~~and/or~~] approval standards and processes of the Texas Medicaid Program[~~]~~ if such specialty centers also submit a program [CSHCN Services Program] provider enrollment application.

(2) Other specialty center standards. The program [CSHCN Services Program] may establish standards to insure quality of care for children with special health care needs in the comprehensive diagnosis and treatment of specific medical conditions for specialty centers with Texas Medicaid Program separate credentialing standards as well as other specialty centers for which the Texas Medicaid Program has not established separate credentialing or approval standards for providers.

(e) Out-of-state coverage.

(1) Fifty or fewer miles from the Texas [~~state~~] border. For clients who would otherwise experience financial hardship or be subject to clear medical risk, the program [CSHCN Services Program] may cover services that are within the scope of the program and provided by health care providers in New Mexico, Oklahoma, Arkansas, or Louisiana located 50 or fewer miles from the Texas [~~state~~] border.

(2) More than 50 miles from the Texas [~~state~~] border. The manager of the department unit having responsibility for oversight of the program [CSHCN Services Program] may approve coverage of services that are within the scope of the program [CSHCN Services Program] and provided by health care providers located within the United States and more than 50 miles from the Texas border in unique circumstances in which the program [CSHCN Services Program] participating physician(s), the client, parent or guardian, and the program [CSHCN Services Program] medical director or assistant medical director agree that:

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

(C) the same treatment or another treatment of equal benefit or cost is not available from Texas program [CSHCN Services Program] providers; and

(D) the out-of-state treatment should result in a decrease in the total projected program [CSHCN Services Program] cost of the client's treatment.

(3) The limitations of this paragraph do not apply to coverage for or payment to program [CSHCN Services Program] providers of selected products or devices including, but not limited to, medical foods or hearing amplification devices[~~]~~ which either are always less costly or [~~and/or~~] are only available[~~]~~ from out-of-state sources.

(4) For program [CSHCN Services Program] reimbursement, all program policies and procedures will apply[~~]~~ including the requirement that all providers be program [CSHCN Services Program] [~~participating~~] providers[~~]~~ as defined by this section.

(5) The program [CSHCN Services Program] may cover costs of transportation and associated meals and lodging for a client and, if necessary, a responsible adult for travel to and from the location of out-of-state services that meet the program approval parameters in this subsection. Travel costs will be negotiated[~~]~~ with approval of specific travel options based on overall cost effectiveness.

§38.7. Ambulatory Surgical Care Facilities.

(a) Ambulatory surgery services may be utilized by the program [CSHCN Services Program] as a cost-efficient means of providing surgical care[~~]~~ as long as quality of care is assured. Any hospital participating in the program [CSHCN Services Program] whose accreditation by the Joint Commission [~~on Accreditation of Health Care Organizations~~] includes hospital-sponsored ambulatory care services may provide ambulatory surgery services for program [CSHCN Ser-

services Program] clients. The program will reimburse only approved ambulatory surgical care facilities for services to clients. [Freestanding ambulatory surgical care (ASC) facilities, even if governed by or affiliated with a hospital participating in the CSHCN Services Program, must apply for CSHCN Services Program approval. The CSHCN Services Program may contract with a limited number of facilities to contain costs. For approval to participate in the CSHCN Services Program, a freestanding ASC facility must meet the following criteria:]

{(1) State licensure requirements. Facilities must comply with state licensure requirements for ambulatory surgical centers at §§135.1 - 135.27 of this title (relating to Operating Requirements for Ambulatory Surgical Centers).}

{(2) Medicare certification. Facilities must comply with Medicare standards concerning ambulatory surgical services at 42 Code of Federal Regulations, Parts 405 and 416.}

{(3) Pediatric equipment. Pediatric facilities must maintain all necessary pediatric equipment including operating room, surgical tools, resuscitation apparatus, pharmaceutical services, beds, and other supplies that are appropriate for children.}

{(4) Staff requirements.}

{(A) Surgical staff participating in the CSHCN Services Program must perform all surgical procedures.}

{(B) An anesthesiologist or certified registered nurse anesthetist participating in the CSHCN Services Program must be present in the operating room for the induction and completion of anesthesia and must remain on the premises (immediately available) during the surgical procedure until the client leaves the facility.}

{(C) A registered nurse with documented clinical pediatric experience must be on the premises at all times the client is in the facility.}

{(5) Risk management principles. The facility must apply risk management principles to all client care.}

{(6) Client transfer. The facility must have client transfer agreements with CSHCN Services Program participating hospitals in the area.}

(b) Freestanding ambulatory surgical care (ASC) facilities, even if governed by or affiliated with a hospital participating in the program, must apply for program approval. The program may contract with a limited number of facilities to contain costs. For approval to participate in the program, a freestanding ASC facility must meet the following criteria:

(1) State licensure requirements. Facilities must comply with state licensure requirements for ambulatory surgical centers at §§135.1 - 135.29 of this title (relating to Operating Requirements for Ambulatory Surgical Centers).

(2) Medicare certification. Facilities must comply with Medicare standards concerning ambulatory surgical services at 42 Code of Federal Regulations, Parts 405 and 416.

{(b) ASC facilities seeking approval for CSHCN Services Program participation must submit documentation concerning their compliance with the criteria stated in subsection (a)(1) - (6) of this section to the CSHCN Services Program or its designee as required by the application process described in subsection (d) of this section.}

(c) The program [CSHCN Services Program] reimbursement for care at freestanding ASC facilities shall be limited to Levels I and II surgical procedures so designated by the American Society of Anesthesiologists. [-]

{(1) children 24 months of age or older; and}

{(2) Levels I and II surgical procedures so designated by the American Society of Anesthesiologists.}

{(d) Applications for approval for CSHCN Services Program participation shall be processed according to the following procedures:}

{(1) Applications will be reviewed by the CSHCN Services Program to assure that:}

{(A) all parts of the application form have been completed, including a signature and date;}

{(B) all criteria for program participation have been met; and}

{(C) copies of documents have been provided verifying the facility's state licensure, Medicare certification, and client transfer agreements with CSHCN Services Program participating hospitals.}

{(2) The CSHCN Services Program shall review all complete applications and shall approve or deny each application in writing within 15 working days of receipt. An incomplete application will be returned to the applicant with an explanation of the information required. The application may be resubmitted with the required documentation for reconsideration.}

{(3) Any ASC facility which disagrees with the result of the application review may appeal the decision in accordance with §38.13 of this title (relating to Right of Appeal).}

{(e) Those providers that have not received any CSHCN Services Program payment for services rendered during the prior year will be given the option of withdrawing from CSHCN Services Program approved status, becoming inactive, or providing updated information to remain active. If updated information is not received within 60 days of the date of notification, the provider will be considered inactive. This action will not terminate a provider's approval, but the provider may be reinstated to active status only by providing current information to the CSHCN Services Program.}

{(1) Updated information may include, but is not limited to, the following:}

{(A) current address; telephone number; state comptroller's vendor identification number, and administrator;}

{(B) current listing of CSHCN Services Program participating medical staff;}

{(C) current listing of qualified staff or facilities available; and}

{(D) Medicare certification status.}

{(2) The provider will be given a current copy of CSHCN Services Program rules to review at the time reinstatement is requested.}

§38.8. *Inpatient Rehabilitation Centers.*

(a) [Introduction:] The program will [CSHCN Services Program shall] reimburse only an approved inpatient rehabilitation center for services provided to clients.

(b) [Criteria:] The criteria for inpatient rehabilitation center approval include the following.

(1) The center shall have current accreditation by either the Joint Commission [on Accreditation of Health Care Organizations] as a comprehensive physical rehabilitation program or the Commission on Accreditation of Rehabilitation Facilities as a comprehensive inpatient rehabilitation program.

(2) (No change.)

(3) The center shall be located within 50 miles of the Texas border [agree to allow on-site visits and/or audit privileges to the CSHCN Services Program staff].

{(4) A physician who is a CSHCN Services Program participating provider, board certified or eligible in his/her specialty, and able to demonstrate experience in rehabilitation shall be available as medical director.}

{(5) A center which serves pediatric clients (clients less than 14 years old), shall have a designated CSHCN Services Program participating pediatrician available to participate in direct client care and consultation. The physician shall be either certified or eligible for certification by the American Board of Pediatrics.}

{(6) When pediatric clients are receiving inpatient rehabilitation treatment, the center shall have at least one registered nurse with pediatric training or experience available to the center at all times.}

{(7) A center which serves pediatric clients shall have a licensed dietitian, preferably with experience in evaluation and counseling children with chronic illness on staff or available for consultation to provide nutrition services.}

{(8) A center that serves pediatric clients shall have at least one recreational area or playroom that is bed and wheelchair accessible, with age-appropriate and safe materials for clients who are at different stages in rehabilitation.}

{(9) A center that serves pediatric clients shall have specialized age-appropriate equipment necessary for provision of care.}

{(10) The center shall arrange for provision of appropriate educational services for children in the rehabilitation center.}

§38.9. Cleft-Craniofacial Services [Cleft/Craniofacial Center Teams].

To assure that clients with cleft lip, cleft palate, or other craniofacial anomalies[, including cleft lip and/or cleft palate,] receive quality, comprehensive services, cleft-craniofacial teams [cleft/craniofacial (C/C) teams] requesting approval from the program must [CSHCN Services Program shall] comply with the following standards:

(1) All cleft-craniofacial surgical procedures are provided within the context and consultation of a coordinated, comprehensive, interdisciplinary cleft-craniofacial team and must be prior authorized. Team composition is consistent with current basic standards of the American Cleft Palate-Craniofacial Association (ACPA).

(2) The comprehensive cleft-craniofacial team will include an operating surgeon, orthodontist, speech-language pathologist, and at least one additional specialist from otolaryngology, audiology, pediatrics, genetics, social work, psychology, and general pediatric or prosthetic dentistry. Adjunct participants may be added as determined by the cleft-craniofacial team to meet the needs of individual clients.

(3) The cleft-craniofacial surgical procedures and related cleft-craniofacial team services are provided in accordance with a client and family-oriented comprehensive treatment plan jointly developed by the client or family and the cleft-craniofacial team.

(A) A copy of the comprehensive treatment plan will be given to the family (prior to the surgical procedures), the local or referring primary care physician, and other collaborative providers, e.g. local dentist, local speech therapist, case manager, etc. who will be providing services to the client.

(B) The plan will include specific services to be provided by the members of the cleft-craniofacial team, action steps, persons responsible, and timeframes.

{(1) Approval process. All C/C teams and affiliated providers must submit a completed CSHCN Services Program C/C provider application packet as specified by the CSHCN Services Program. Applications shall include an application form, CSHCN Services Program provider agreements, documentation of licensure, board certifications for physicians, documentation of dental specialty for dentists, and a description of the C/C team composition.}

{(2) C/C team administrator responsibility.}

{(A) The C/C team shall clearly identify an administrator who is responsible for coordinating and maintaining all records associated with C/C team activities and assuring that the C/C team abides by the CSHCN Services Program rules and regulations.}

{(B) The C/C team's administrator shall recognize clients' rights. All members of the C/C team shall:}

{(i) give parents/guardians or adult clients complete information concerning diagnosis, treatment, and prognosis; and}

{(ii) involve parents/guardians or adult clients in decisions concerning the client's care, including development of the treatment plan.}

{(3) Composition of a comprehensive C/C team. Several health care providers in the same category may be designated as C/C team participants (e.g. more than one plastic surgeon or more than one C/C team case manager). C/C team members responsible for monitoring and coordinating the client's treatment plan and follow-up should interact consistently with the client.}

{(A) The comprehensive C/C team shall be composed of the following participants:}

{(i) a plastic surgeon and/or an oral surgeon;}

{(ii) an otolaryngologist;}

{(iii) a primary care physician;}

{(iv) an orthodontist and/or a pediatric dentist;}

{(v) a licensed speech language pathologist (master's level);}

{(vi) a C/C team care coordinator who is capable of performing the responsibilities specified in paragraph (4) of this section; and}

{(vii) a client educator.}

{(B) Adjunct participants may be added as determined by the C/C team to meet the needs of individual clients.}

{(4) Care coordination. The C/C team care coordinator will be responsible for the coordination of services for each client. Each client should have only one C/C team care coordinator who will assure that the focus of the service is client and family oriented and that a comprehensive treatment plan is jointly developed by the client/family and C/C team. A copy of the plan shall be given to the family, the local and/or referring physician, other appropriate agencies, including a local care coordinator designated by the family, and the department's regional social worker upon request. The plan should include specific treatments and time frames for all disciplines and agencies involved. The C/C team care coordinator must assure that the client is seen by only one C/C team.}

{(5) Affiliated providers.}

~~{(A) To facilitate statewide coverage, providers may be approved as C/C team members when affiliated with an approved C/C team. Affiliated providers must meet the CSHCN Services Program provider enrollment requirements found in §38.6 of this title (relating to Providers).}~~

~~{(B) An affiliated provider shall consult with and coordinate the development of a treatment plan with a comprehensive C/C team(s) according to each individual client's needs.}~~

~~{(C) As part of its application, an affiliated provider must specify the comprehensive C/C team(s) with which it is linked. A letter of agreement between the affiliated provider and the C/C team that verifies the linkage and specifies the method of communication and consultation must accompany the application.}~~

§38.10. *Payment of Services.*

The program [CSHCN Services Program] reimburses [participating] providers for covered services for clients. Payment may be made only after the delivery of the service, with the exception of meals, transportation, [and] lodging, and insurance premium payments. Excluding allowable insurance or health maintenance organization co-payments, the client or client's family must not be billed for the service or be required to make a preadmission or pretreatment payment or deposit. Providers may not request or accept payment from the client or the client's family for completing any program [CSHCN Services Program] forms. Providers must agree to accept established fees as payment in full. The program may negotiate reimbursement alternatives to reduce costs through requests for proposals, contract purchases, or [and/or] incentive programs.

(1) Payment or denial of claims. All payments made on behalf of a client will be for claims received by the program [CSHCN Services Program] or its payment contractor within 95 days of the date of service, within 95 days from the date of discharge from inpatient hospital and inpatient rehabilitation facilities, within 95 days from the date the client's eligibility is added to program automation systems, or within the submission deadlines listed in paragraphs (1)(B)(ii) and (2) of this section, whichever is later. If the 95th day for receipt of a claim falls on a weekend or holiday, the deadline shall be extended to the next business day following the weekend or holiday. Claims will either be paid or denied within 30 days of receipt. The manager of the department unit having responsibility for oversight of the program [CSHCN Services Program] or his or her [his/her] designee(s) may waive the filing deadlines according to the conditions and circumstances specified in paragraphs (3) - (5) of this section. A claim must be processed and paid within 24 months of the date of service. Claims received by the program [CSHCN Services Program] or its payment contractor after this time frame will not be considered for payment by the program [CSHCN Services Program].

(A) Claims will be paid[;] if submitted on claim forms approved by the program [CSHCN Services Program] (including electronic claims submission systems)[;] and if the required documentation is received with the claim.

(B) Denied claims are claims which are incomplete, submitted on the wrong form, lack necessary documentation, contain inaccurate information, fail to meet the filing deadline, are for ineligible persons, services, or providers, or [and/or] are for clients who do not qualify for the health care benefit claimed.

(i) Corrected claims must be submitted on claim forms approved by the program [CSHCN Services Program;] along with required documentation[;] within the filing deadline established in clause (ii) of this subparagraph.

(ii) Denied claims may be corrected and resubmitted for reconsideration if received within 120 days of the last denial or [of and/or] adjustment to the original claim. If the results of the reconsideration process are unsatisfactory, denied claims may be appealed according to §38.13 of this title (relating to Right of Appeal).

(2) Claims involving health insurance coverage, CHIP, or Medicaid. Any health insurance that provides coverage to the client must be utilized before the program [CSHCN Services Program] can pay for services. Providers must file a claim with health insurance, CHIP, or Medicaid prior to submitting any claim to the program [CSHCN Services Program] for payment. Claims with health insurance must be received by the program [CSHCN Services Program] within 95 days of the date of disposition by the other third party resource, and no later than 365 days from the date of service. The program [CSHCN Services Program] will consider claims received for the first time after the 365-day deadline[;] if a third party resource recoups a payment made in error; however, the claim must be received by the program [CSHCN Services Program] within 95 days from the third party's disposition. The program [CSHCN Services Program] may pay for covered health care benefits during CHIP or other health insurance enrollment waiting periods. During these periods, providers may file claims directly with the program [CSHCN Services Program] without evidence of denial by the other insurer.

(A) Health insurance denial or nonresponse. If a claim is denied by health insurance, the provider may bill the program [CSHCN Services Program;] if the letter of denial also is submitted with the claim form. If the denial letter is not available, the provider must include on the claim form the date the claim was filed with the insurance company, the reason for the denial, name and telephone number of the insurance company, the policy number, the name of the policy holder and identification numbers for each policy covering the client, the name of the insurance company employee who provided the information on the denial of benefits, and the date of the contact. If more than 110 days have elapsed from the date a claim was filed with the third party resource and no response has been received, the claim may be submitted to the program [CSHCN Services Program] for consideration of payment. Claims must be submitted with documentation indicating the third party resource has not responded.

(B) Explanation of benefits (EOB). The health insurance EOB must accompany any claim sent to the program [CSHCN Services Program] for payment[;] if available. If the EOB is unavailable, the provider must include on the claim form the name and telephone number of the insurance company, the amount paid, the policy number, and name of the insured for each policy covering the client.

(C) Late filing. Claims denied by health insurance on the basis of late filing will not be considered for payment by the program [CSHCN Services Program].

(D) Deductibles and coinsurance. If the client has other third party coverage, the program [CSHCN Services Program] may pay a deductible or coinsurance for the client as long as the total amount paid to the provider does not exceed the allowable amount [maximum allowed] for the covered service[;] and conforms with current program [CSHCN Services Program] policies regarding third party resources, deductible, and coinsurance.

(3) Exceptions to the claim receipt or correction and resubmission deadlines. The manager of the department unit having responsibility for oversight of the program [CSHCN Services Program] or his or her [his/her] designee(s) will consider a provider's request for an exception to the claim receipt or correction and resubmission deadlines provided in paragraphs (1) and (2) of this section[;] if the delay in claim

receipt or correction and resubmission is due to one of the following reasons:

(A) damage to or destruction of the provider's business office or records by a catastrophic event or natural disaster^[§] including² but not limited to fire, flood, hurricane, or earthquake^[§] that substantially interferes with normal business operations of the provider;

(B) damage to or destruction of the provider's business office or records caused by the intentional acts of an employee or agent of the provider^[§] only if:

(i) - (ii) (No change.)

(C) delay² ~~[or]~~ error² or constraint imposed by the program in the eligibility determination of a client or ~~[and/or]~~ in claims processing, or delay due to erroneous written information from the program or its designee, or another state agency; or

(D) (No change.)

(4) Exception requests. Providers requesting an exception under paragraph (3)(A) - (D) of this section must submit an affidavit or statement from a person with personal knowledge of the facts detailing the exception being requested² ^[§] the cause for the delay² ^[§] verification that the delay was not caused by neglect, indifference, or lack of diligence of the provider or the provider's employee or agent² ^[§] and any additional information requested by the program. All claims for which the provider requests an exception must accompany the request. The program will consider only the claim(s) attached to the request, and the exception request must be received by the program within 18 months from the date of service.

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

(C) For exception requests under paragraph (3)(C) of this section, the provider must submit written documentation from the program, its designee, or another state agency containing the erroneous information or explanation of the delay, error, or ~~[and/or]~~ constraint.

(D) For exception requests under paragraph (3)(D) of this section, the provider must submit the following:

(i) a written repair statement or invoice² ^[§] a computer or modem generated error report indicating attempts to transmit the data failed for reasons outside the control of the provider² ^[§] or an explanation for the system implementation or other claim submission problems;

(ii) - (iii) (No change.)

(5) Other exceptions to claims receipt or correction and resubmission deadlines. The manager of the department unit having responsibility for oversight of the program ~~[CSHCN Services Program]~~ or his or her ~~[his/her]~~ designee(s) will consider a provider's request for an exception to claims receipt or correction and resubmission deadlines due to delays caused by entities other than the provider and the program under the following circumstances:

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

(D) the exception request includes an affidavit or statement from a representative of an original payer, a third party payer, or ~~[and/or]~~ a person who has personal knowledge of the facts, stating the exception being requested, documenting the cause for the delay, and providing verification that the delay was caused by another entity and not the neglect, indifference, or lack of diligence of the provider or the provider's employee(s) or agent(s).

(6) Program fees. Subject to any reductions or limitations authorized by §38.16(b)(2)(E) of this title (relating to Procedures to Address Program Budget Alignment), the program ~~[CSHCN Services~~

Program fee schedules. The CSHCN Services Program] or its designee shall reimburse claims for covered medical, dental, and other services according to the following ~~[fee schedules]~~:

(A) meals, lodging, and transportation:

(i) - (ii) (No change.)

(iii) transportation:

(I) - (II) (No change.)

(III) air fare--the ticket price reflecting the state discount if ordered by MTP^[§] or the billed amount^[§] if MTP had no opportunity to coordinate transportation in an emergency; and

(IV) cab fare--the billed amount^[§] if other transportation is unavailable^[§] or the MTP is unable to coordinate transportation;

(B) (No change.)

(C) ambulance service--the lower of the billed amount or the amount ~~[maximum charge]~~ allowed by the Texas Medicaid Program;

(D) transportation of remains:

(i) first call--\$150 ~~[\$75]~~;

(ii) (No change.)

(iii) container--\$150 ~~[\$75]~~;

(iv) - (v) (No change.)

(E) nutritional products--the least ~~[lower]~~ of the billed amount, the amount allowed by the Texas Medicaid Program, or the Average Wholesale Price (AWP) per unit according to the prices in the current edition of the Drug Topics Red Book, published by Medical Economics Company, Inc., Montvale, New Jersey 07645-1742, on file with the CSHCN Services Program. For products not listed in the current edition of the Drug Topics Red Book, reimbursement shall be based on the same methodology using the AWP supplied by the manufacturer of the product;

(F) nutritional services--the lower of the billed amount or the amount ~~[maximum charge]~~ allowed by the Texas Medicaid Program;

(G) medical foods--the least ~~[lower]~~ of the billed amount, the manufacturer's suggested retail price (MSRP), or the amount ~~[maximum charge]~~ allowed by the Texas Medicaid Program ~~[up to a maximum of \$200 per client per month]~~;

(H) out-patient medications:

(i) - (ii) (No change.)

(iii) medications covered by Medicaid when billed by hospitals--(the lower of the billed amount or the drug cost available through the database used by the Texas Medicaid Vendor Drug Program plus dispensing fee) ~~[\$2.28]/0.970~~; and

(iv) hemophilia blood factor products--the lower of the billed price or the United States Public Health Service (USPHS) price in effect on the date of service ~~[plus a dispensing fee of \$.04 per unit of factor]~~;

(I) expendable medical supplies--the lower of the billed amount or the ~~[maximum]~~ amount allowed by the Texas Medicaid Program;

(J) durable medical equipment--provided by enrolled home health agencies and durable medical equipment providers,

the lower of the billed amount or the amount allowed [~~maximum allowable fee for durable medical equipment established~~] by the Texas Medicaid Program. If the Texas Medicaid Program [~~program~~] has not established an allowable amount [~~a maximum fee~~], then reimbursement will be the least of the following:

(i) (No change.)

(ii) the Medicare fee schedule as defined in 1 [25] Texas Administrative Code, §354.1031(b)(9) [§29.304]; or

(iii) (No change.)

(K) (No change.)

(L) total parenteral nutrition and hyperalimentation [~~nutrition/hyperalimentation~~] (including equipment, supplies and related services)--the lower of the billed amount or the [~~maximum~~] amount allowed by the Texas Medicaid Program;

(M) home health nursing services (provided only through participating program [~~CSHCN Services Program participating~~] home and community support service agencies)--reimbursement for a maximum of 200 hours per client per calendar year, with an additional 200 hours per client per calendar year available[;] if justification of need and cost effectiveness are documented;

(i) services provided by a registered nurse--the lower of the billed amount or the amount allowed by the Texas Medicaid Program [~~\$36 per hour~~];

(ii) services provided by a licensed vocational nurse--the lower of the billed amount or the amount allowed by the Texas Medicaid Program [~~\$28 per hour~~]; and

(iii) services provided by a home health aide or home health medication aide (including those legally delegated by a supervising registered nurse)--the lower of the billed amount or the amount allowed by the Texas Medicaid Program [~~\$12 per hour~~];

(N) outpatient physical therapy, occupational therapy, speech-language pathology, and respiratory therapy (provided by physicians or by therapists other than physicians)--the lower of the billed amount or the amount allowed by the Texas Medicaid Program; [;]

~~((i) services provided by therapists other than physicians--the lower of the billed amount or the amount allowed by the Texas Medicaid Program; and~~

~~((ii) services provided by physicians--the lower of the billed amount or the amount allowed by the Texas Medicaid Program;]~~

(O) audiological testing and amplification devices--the lower of the billed amount or the amount allowed by the Texas Medicaid Program [~~Program for Amplification for Children of Texas (PACT)~~];

(P) insurance premium payment assistance program--the lowest available premium for a plan which covers the client[;] if cost effective [~~cost-effective~~];

(Q) hospital (inpatient and outpatient care) and inpatient psychiatric care--reimbursed at 80% of the rate authorized by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)[;] which is equivalent to the hospital's Medicaid interim rate;

(R) inpatient rehabilitation care--reimbursed at 80% of TEFRA rates[;] for a maximum of 90 inpatient days per calendar year;

(S) (No change.)

(T) care for renal disease--

(i) renal dialysis services--the lower of the billed amount or the amount allowed by the Texas Medicaid Program; and [~~and/or~~]

(ii) (No change.)

(U) - (V) (No change.)

(W) covered professional services by physicians, podiatrists, advanced practice registered nurses, psychologists, licensed professional counselors, or other providers that are not otherwise specified--the lower of the billed amount or the amount allowed by the Texas Medicaid Program;

(X) independent laboratory--the lower of the billed amount or the [~~maximum~~] amount allowed by the Texas Medicaid Program;

(Y) - (Z) (No change.)

(AA) vision services--the lower of the billed amount or the amount allowed by the Texas Medicaid Program, except certain specialized [~~high-powered~~] lenses, which are reimbursed at the manufacturer's suggested retail price less 18%[;]

(7) Required documentation. The program [~~CSHCN Services Program~~] may require documentation of the delivery of goods and services from the provider.

(8) Overpayments.

(A) Overpayments are payments made by the program [~~CSHCN Services Program~~] due to the following:

(i) - (v) (No change.)

(B) Overpayments made to providers must be reimbursed to the department by lump sum payment or, at the department's discretion, offset against current payments [~~claims~~] due to the provider for services to other clients. The department also shall require reimbursement of overpayments from any person or persons who have a legal obligation to support the client and have received payments from a payer of other benefits. Providers, clients, and person(s) responsible for clients may appeal proposed recoupment of overpayments by the department according to §38.13 of this title [~~(relating to Right of Appeal)~~].

§38.11. *Contracts, Written Agreements, and Donations.*

The program [~~CSHCN Services Program~~] may contract on a bid basis for treatment, equipment, medications, supplies, program operations, and other services in order to conserve funds and administer the program effectively.

(1) The program [~~CSHCN Services Program~~] may enter into contracts or written agreements with persons or entities for the development and improvement of program standards and services.

(2) The program [~~CSHCN Services Program~~] may use consultants from any medical or dental specialty or other discipline to address specific issues and problems in relation to the identification, diagnosis and evaluation, rehabilitation, case management, other family support services, and health benefits coverage for clients.

(3) With approval as required by law, the program [~~CSHCN Services Program~~] may accept gifts and donations.

§38.12. *Denial, Modification, Suspension, or Termination* [~~Denial/Modification/Suspension/Termination~~] *of Program Eligibility or Eligibility for* [~~Health Care Benefits and/or~~] *Health Care Benefits.*

(a) Any person applying for or eligible for [~~receiving~~] health care benefits from the program [~~CSHCN Services Program~~] shall be no-

tified in writing if the program [CSHCN Services Program] proposes to deny, modify, suspend, or terminate such health care benefits because:

- (1) (No change.)
- (2) the applicant or family [applicant/family] does not meet financial eligibility requirements;
- (3) the person does not meet Texas residency requirements;
- ~~[(3) the person is not a bona fide resident of Texas;]~~
- (4) (No change.)
- (5) [the applicant has a] behavioral or emotional condition(s) exist, but no physical or developmental condition(s);
- (6) a client [person who] has received third party or liability payments and has failed to reimburse the department for services provided to the client;
- (7) the client [person] attains the age of 21, except for adults with cystic fibrosis;
- (8) utilization review indicates inappropriate use of program [CSHCN Services Program] services and the client and family fail [client/family fails] to adhere to a plan established to direct or [and/or] supervise the use of program [CSHCN Services Program] services;
- (9) program [CSHCN Services Program] funds are reduced or curtailed; or
- (10) the client is placed on a waiting list for program [CSHCN Services Program] health care benefits.

(b) The program [CSHCN Services Program] will notify the parents, foster parents, guardian, managing conservator, adult applicant, or adult client [parent/foster parent/guardian/managing conservator or the adult applicant/client] in writing of the action, the reasons for the action, and the right of appeal in accordance with §38.13 of this title (relating to Right of Appeal).

§38.13. Right of Appeal.

(a) Administrative review.

(1) If the program denies eligibility to a program applicant, the program shall give the applicant written notice of the denial and the applicant's right to request an administrative review of the denial within 30 days of the date of the notification.

(2) If the program proposes to modify, suspend, or terminate a client's eligibility for health care benefits (unless such program actions are authorized by §38.16 of this title (relating to Procedures to Address Program Budget Alignment)), the program shall give the client written notice of the proposed action and the client's right to request an administrative review of the proposed action within 30 days of the date of notification.

(3) If the program denies a prior-authorization or authorization request for program services, the program shall give the client and provider written notice of the denial and the right of the client or provider to request an administrative review of the denial within 30 days of the date of notification.

(4) A client, family, or provider may not request administrative review of the program's denial of a prior-authorization or authorization request for program services or reduced provider reimbursement amounts that are authorized by §38.16 of this title.

(5) If the program denies a provider's claim that has been corrected and resubmitted for reconsideration according to §38.10(1)(B)(ii) of this title (relating to Payment of Services), the

program shall give the provider written notice of the denial. The provider has the right to request an administrative review of the denial within 30 days of the date of notification.

(6) If the program denies or proposes to modify, suspend, or terminate an individual provider's participation in the program, the program shall give the provider written notice of the proposed action and the provider's right to request an administrative review of the proposed action within 30 days of the date of notification.

(7) If the applicant, client, family, or provider requests an administrative review in writing within 30 days of the date of the notification, the program shall conduct an administrative review of the circumstances surrounding the proposed action. The program shall give the applicant, client, family, or provider written notice of the program decision and the supporting reasons for the decision within 30 days of receipt of the request for administrative review.

(8) If the applicant, client, family, or provider does not respond in writing within the 30-day period, the applicant, client, family, or provider is presumed to have waived the administrative review as well as access to a fair hearing, and the program's action is final.

(b) Fair hearing. If the applicant, client, family, or provider is dissatisfied with the program's decision and supporting reasons following the administrative review, the applicant, client, family, or provider may request a fair hearing in writing addressed to the Children with Special Health Care Needs Services Program, Purchased Health Services Unit, MC 1938, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347 within 20 days of receipt of the administrative review decision notice. If the applicant, client, family, or provider fails to request a fair hearing within the 20-day period, the applicant, client, family, or provider is presumed to have waived the request for a fair hearing, and the program may take final action. A fair hearing requested by an applicant, client, family, or provider shall be conducted in accordance with §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

§38.14. Development and Improvement of Standards and Services.

To ensure that cost-effective, quality, appropriate medical and related services are available and delivered to clients, the program [CSHCN Services Program] may establish a system of program evaluation to obtain management information about the program's [CSHCN Services Program's] operation and effectiveness, [;] to establish guidelines and standards for program [CSHCN Services Program] health care services, [;] to monitor compliance with these established standards and guidelines, [;] to identify and analyze patterns and trends in provider billing and service delivery, [;] and to develop systems which promote family-centered, community-based alternatives that nurture and support children with special health care needs.

(1) Quality assurance. The program [CSHCN Services Program] may establish a system of monitoring the quality, medical necessity, and effectiveness of services.

(A) Standards and guidelines. The program [CSHCN Services Program] may develop standards and guidelines for services and providers reimbursed by the program [CSHCN Services Program] to ensure that quality services are available.

(B) Review of services. The program [CSHCN Services Program] may conduct or contract for concurrent and/or retrospective review of client care services reimbursed by the program [CSHCN Services Program].

(C) Provider review. The program [CSHCN Services Program] may conduct periodic quality assurance reviews for provider services.

(D) Survey of clients and families. The program [~~CSHCN Services Program~~] shall survey clients periodically to assess the availability, appropriateness, effectiveness, accessibility, and cultural sensitivity of provided services.

(2) Utilization review. Utilization review will assess the appropriateness of services provided to program [~~CSHCN Services Program~~] clients by monitoring systems developed or contracted by the program [~~CSHCN Services Program~~. Suspected fraud and abuse cases will be evaluated by the Office of the General Counsel for possible prosecution].

(3) Task forces. The program [~~CSHCN Services Program~~] may establish advisory task forces [~~to advise the CSHCN Services Program~~].

(4) Cooperation with other agencies. The department cooperates with public and private agencies and with persons interested in the welfare of children with special health care needs. The program [~~CSHCN Services Program~~] will make every effort to establish cooperative agreements with other state agencies to define the responsibilities of each agency in relation to specific programs to avoid duplication of services.

(5) Collaboration with stakeholders. The program [~~CSHCN Services Program~~] values the participation of all stakeholders who have an interest in children with special health care needs and will make every effort to work collaboratively with stakeholders in the design, development, and implementation of program rules and policies.

(6) Systems development activities. The program [~~CSHCN Services Program~~] may conduct population-based systems development activities to improve and support the state's infrastructure for serving all children with special health care needs and their families by program staff or through contractors.

~~[(A)] Population-based systems development activities include, but are not limited to the development and maintenance of community-based systems such as case management, parent case management, parent networks, parent resource centers, parent or provider [parent/provider] training, voucher programs, wellness centers, permanency planning, or other systems that may directly or indirectly support any family in Texas with the program [CSHCN].~~

~~[(B)] The CSHCN Services Program may establish wellness centers, which are programs and/or physical locations of community-based service organizations which provide specific support services for children with special health care needs and their families.]~~

~~[(i)] Community-based service organizations that serve as wellness centers may include, but are not limited to: hospitals, churches, boys/girls organizations, health centers, or school-based centers. Existing community-based service organizations that provide services to children with special health care needs and their families within a community shall receive preference in funding by the CSHCN Services Program.]~~

~~[(ii)] Services provided in community-based wellness centers may include, but are not limited to:]~~

~~[(I)] case management or social services;]~~

~~[(II)] psychological services, particularly for child or family groups;]~~

~~[(III)] sibling support;]~~

~~[(IV)] dietary counseling;]~~

~~[(V)] recreation or fitness programs and physical conditioning;]~~

~~[(VI)] a meeting place for family or child groups school liaison support;]~~

~~[(VII)] a parent/family information or resource center;]~~

~~[(VIII)] parent to parent referrals and/or networking;]~~

~~[(IX)] health promotion education and/or training; and]~~

~~[(X)] family or individual health planning, including permanency planning.]~~

~~[(iii)] Wellness center services may include direct services as well as population-based services.]~~

§38.15. Third Party Recovery.

(a) The program or the program's designee may recover the cost of services provided to a client from a person who does not pay or reimburse the department as required by Health and Safety Code, §35.007.

(b) The program or the program's designee may recover the cost of services provided to a client from any third party who has a legal obligation to pay for the services provided.

(c) The program's right of recovery against a third party liable for the client's condition or injury is limited to the amount paid by the program for all claims submitted by program providers for covered services to treat the client's condition or injury.

(d) The program or the program's designee may agree to waive all or part of the program's right to recover from a liable third party if:

(1) the total of all claims from providers for the cost of services provided to the client exceeds the amount of the available recovery or settlement;

(2) the program or the program's designee finds that enforcement of the program's right of recovery of the cost of services provided would adversely affect the client's long-term health and welfare; or

(3) the program or the program's designee finds that the cost of recovery could exceed the cost of services provided by the program.

§38.16. Procedures to Address [CSHCN Services] Program Budget Alignment.

(a) The department shall analyze actuarial cost projections concerning program [~~CSHCN Services Program~~] administrative and client services to estimate the amount of funds needed in the fiscal year by the program to serve program [~~CSHCN Services Program~~] clients and shall monitor such program cost projections and funding analyses at least monthly to determine whether the estimated amount of funds needed by the program will:

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

(b) When the program [~~CSHCN Services Program~~] projects that the estimated amount of funds needed in the fiscal year by the program to serve program [~~CSHCN Services Program~~] clients will exceed the program's appropriated funds and other available resources for the fiscal year, the program shall use the following methodology to reduce or limit [reduce/limit] the amount of funds to be expended by the program:

(1) give clients and providers who will be directly affected written notice of any reductions or limitations of services, coverage, or ~~and/or~~ reimbursements;

(2) take the following actions in the order listed only until the projected amount of funds to be expended by the program approximately equals, but does not exceed, the program's appropriated funds and other available resources:

(A) implement administrative efficiencies~~[;]~~ while avoiding changes which may jeopardize the quality and integrity of the program ~~[CSHCN Services Program]~~ service delivery;

(B) (No change.)

(C) at the same time the waiting list is established, the program shall:

(i) provide only limited prior authorization for family support services for ongoing clients, as determined by the medical director or other designated medical staff, only in order to continue services already being provided at the time the waiting list is established, or ~~and/or~~ when the specific services are required to prevent out-of-home placement of the client (as documented by the program ~~[CSHCN Services Program]~~ regional case management staff or ~~contractors, or [staff/contractors, and/or]~~ when the provision of such services is cost effective for the program;

(ii) (No change.)

(iii) allow limited prior authorization of diagnosis and evaluation services on a short-term basis~~[;]~~ only when such information is needed to assess whether clients on the waiting list have "urgent need for health care benefits" as described in subsection (e) of this section and only with prior authorization and approval by the medical director or other designated medical staff.

(D) place new applicants or re-applicants with lapsed eligibility who are determined eligible for program health care benefits (new clients for health care benefits) on the waiting list. These clients will be ordered on the waiting list according to the date and time ~~[date/time]~~ the client is determined eligible for program health care benefits;

(E) reduce or limit ~~[reduce/limit]~~ reimbursements for contractual service providers~~[;]~~ while avoiding changes which may jeopardize the integrity of the contractor base and thereby decrease client access to services;

(F) place clients who are eligible to receive program ~~[CSHCN Services Program]~~ health care benefits and who currently are not on the waiting list (ongoing clients for health care benefits) on the waiting list. These clients will be ordered on the waiting list according to the original date and time ~~[date/time]~~ that starts the client's latest uninterrupted sequence of eligibility for program health care benefits~~[;]~~ and in the following order of movement to the waiting list:

(i) ongoing clients for health care benefits who have one or more sources of substantial health insurance coverage (such as Medicaid, CHIP, [Medicaid/CHIP] or other private health insurance similar in scope) in addition to the CSHCN Services Program (not including those ongoing clients for whom the program ~~[CSHCN Services Program]~~ pays the insurance premiums);

(ii) ongoing clients for health care benefits in the following order by age groups: 21 years of age or older, ~~[;]~~ 20 years of age, ~~[;]~~ 19 years of age, ~~[;]~~ 18 years of age; and

(iii) (No change.)

(G) employ additional measures to reduce or limit ~~[reduce/limit]~~ the amount of funds to be expended by the program as directed by rule.

(c) If the procedures described in subsection (b)(2)(A) - ~~(G)~~~~(F)~~ of this section enable the program to project that the estimated amount of funds to be expended by the program in the fiscal year approximately equals, but does not exceed, the program's appropriated funds and other available resources, the program shall take the following additional steps in order to provide health care benefits to as many clients with urgent need for health care benefits as possible who are currently on the waiting list.

(1) generate cost savings by taking the following steps in the order listed:

(A) give clients and providers who will be directly affected written notice of any reductions or limitations of services, coverage, or ~~and/or~~ reimbursements;

(B) reduce or limit ~~[reduce/limit]~~ reimbursements for contractual service providers~~[;]~~ while avoiding changes which may jeopardize the integrity of the contractor base and thereby decrease client access to services; and

(C) (No change.)

(2) utilize cost savings generated to remove as many clients with urgent need for health care benefits as possible from the waiting list and provide health care benefits to those clients. Clients with urgent need for health care benefits will ~~shall~~ be removed from the waiting list according to the original date and time ~~[date/time]~~ that starts the client's latest uninterrupted sequence of eligibility for program health care benefits and in the following group order:

(A) clients who are less than 21 years old and who have an urgent need for health care benefits~~[;]~~ as described in subsection (e) of this section;

(B) clients who are 21 years of age or older and who have an urgent need for health care benefits~~[;]~~ as described in subsection (e) of this section;

(3) (No change.)

(4) provide limited health care benefits or ~~and/or~~ payment of outstanding bills for health care benefits for clients with urgent need for health care benefits who are on the waiting list and remain on the waiting list. The program's coverage of such health care benefits may be limited in scope, amount, and duration and is not intended to be sustained over time. If limited health care benefits coverage includes coverage of family support services, the coverage of family support services must be limited according to the parameters set forth in subsection (b)(2)(C)(i) of this section. Clients with urgent need for health care benefits who are on the waiting list will be served in the same order used in paragraph (2) of this subsection to remove clients with urgent need for health care benefits from the waiting list. This coverage may be provided to clients with urgent need on the waiting list prior to or at any point during activities described by paragraphs (2) - (3) of this subsection only:

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

(d) When the program ~~[CSHCN Services Program]~~ projects that the estimated amount of funds to be expended by the program in the fiscal year is less than the program's appropriated funds and other available resources due to the cost reduction, limitation, or deferral procedures implemented according to subsections (b) or (c) of this section, or the program's receipt of additional funding, or funding analysis re-

sulting in a projected amount of unobligated funds, the program shall increase the amount of funds to be expended by the program.

(1) In an effort to expend unobligated funds (except for unobligated funds resulting from program actions taken according to subsection (c) of this section), the program shall utilize the following steps in the order listed only until the program projects that the estimated amount of unobligated funds will be expended by the program during the fiscal year:

(A) take clients off the waiting list according to the original date and time [date/time] that starts the client's latest uninterrupted sequence of eligibility for program health care benefits and in the following group order:

(i) clients who are less than 21 years old and who have an urgent need for health care benefits[-] as described in subsection (e) of this section;

(ii) clients who are 21 years of age or older and who have an urgent need for health care benefits[-] as described in subsection (e) of this section;

(iii) - (iv) (No change.)

(B) (No change.)

(C) provide limited health care benefits for clients who are on the waiting list and remain on the waiting list, [; and/or] payment of outstanding bills for health care benefits for clients who are on the waiting list and remain on the waiting list, or [; and/or] payment of outstanding bills for health care benefits for clients who have been taken off the waiting list. The program's coverage of such health care benefits may be limited in scope, amount, and duration and is not intended to be sustained over time. If limited health care benefits coverage includes coverage of family support services, the coverage of family support services must be limited according to the parameters set forth in subsection (b)(2)(C)(i) of this section. This coverage may be provided at any point during activities described by subparagraphs (A) and (B) of this paragraph only:

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

(D) if the program [CSHCN Services Program] projects that the amount of funds to be expended by the program in the fiscal year will be less than the program's appropriated funds and other available resources after no clients eligible for program [CSHCN Services Program] health care benefits remain on the waiting list, the program may take the following actions in the following order:

(i) - (ii) (No change.)

(iii) remove any of the additional measures taken to reduce or limit [reduce/limit] the amount of funds to be expended by the program as directed by rule;

(iv) remove any reductions or limitations [reductions/limitations] to contractor reimbursements that have been implemented; and

(v) (No change.)

(2) In an effort to expend unobligated funds resulting from program actions taken according to subsection (c) of this section (unobligated cost savings funds that remain after all clients with urgent need for health care benefits have been removed from the waiting list and provided health care benefits), the program shall utilize the following steps in the order listed only until the program projects that the estimated amount of unobligated funds will be expended by the program during the fiscal year:

(A) take additional clients off the waiting list according to the original date and time [date/time] that starts the client's latest uninterrupted sequence of eligibility for program health care benefits and in the following group order:

(i) - (ii) (No change.)

(B) (No change.)

(C) provide limited health care benefits for clients identified in subparagraph (A)(i) and (ii) of this paragraph who are on the waiting list and remain on the waiting list, [; and/or] payment of outstanding bills for health care benefits for clients identified in subparagraph (A)(i) and (ii) of this paragraph who are on the waiting list and remain on the waiting list, or [; and/or] payment of outstanding bills for health care benefits for clients who have been taken off the waiting list. The program's coverage of such health care benefits may be limited in scope, amount, and duration and is not intended to be sustained over time. If limited health care benefits coverage includes coverage of family support services, the coverage of family support services must be limited according to the parameters set forth in subsection (b)(2)(C)(i) of this section. This coverage may be provided at any point during activities described by subparagraphs (A) and (B) of this paragraph and only as stipulated in paragraph (1)(C)(i) - (iii) of this subsection;

(D) (No change.)

(E) remove any reductions or limitations [reductions/limitations] to contractor reimbursements that have been implemented.

(e) The program shall establish a protocol to be used by the medical director or other designated medical staff to determine whether a client has an "urgent need for health care benefits" by considering criteria including, but not limited to, the following:

(1) the physician or dentist who signs the client's application or [and/or] the treating physician or dentist [physician/dentist] at tests or [and/or] documents the physician's or dentist's [physician/dentist's] determination that delay in receiving health care benefits could result in loss of life, permanent increase in disability, or intense pain and suffering [pain/suffering];

(2) the client or family [client/family] states that no other source of health insurance coverage is available to the client;

(3) information on the application for health care benefits indicates the complexity of the client's condition or [and/or] need for care;

(4) information received from program [CSHCN Services Program] regional case management staff or contractors [staff/contractors] supports other information gathered or [and/or] indicates that a delay in health care benefits could reasonably be expected to result in an out-of-home placement or institutionalization [placement/institutionalization] of the client because the family cannot continue to care for the client; and

(5) (No change.)

(f) The program [CSHCN Services Program] central office may establish and administer the waiting list for health care benefits to address a budget shortfall.

(1) In order to facilitate contacting clients on the waiting list, the program [CSHCN Services Program] shall collect information including, but not limited to the following:

(A) - (G) (No change.)

(2) (No change.)

(3) The program shall refer clients on the waiting list to other possible sources of services^[7] and shall contact waiting list clients periodically to confirm their continuing need for program [CSHCN Services Program] services.

(4) The program will offer case management services as needed or desired ~~needed/desired~~ to all clients who are eligible for health care benefits^[7] including those on the waiting list for health care benefits.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201002003

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 6, 2010

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



25 TAC §38.13

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

STATUTORY AUTHORITY

The repeal is authorized by Government Code, §531.0055(e), and Health and Safety Code, §§35.003, 35.004, 35.005, 35.006, and 1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The repeal affects Government Code, Chapter 531, and Health and Safety Code, Chapters 35 and 1001.

§38.13. Right of Appeal.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201002004

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 6, 2010

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



CHAPTER 140. HEALTH PROFESSIONS REGULATION

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§140.2,

140.103, 140.153, 140.204, 140.277, 140.301, 140.403, and 140.504, and new §§140.23, 140.120, 140.169, 140.217, 140.286, 140.377, 140.431, and 140.523 concerning fees and procedures for issuance of criminal history evaluation letters in the perfusionist, sanitarian, code enforcement officer, respiratory care practitioner, optician, massage therapist, chemical dependency counselor, and medical radiologic technologist regulatory programs.

BACKGROUND AND PURPOSE

The purpose of the rules is to establish procedures to evaluate, upon request, the criminal history of potential applicants to determine if they are ineligible to hold a license. These evaluations will occur before the potential applicants enter or complete a preparatory educational program or licensure examination leading to licensure thereby allowing applicants to avoid unnecessary hardship or costs if their criminal history is a ground for license ineligibility. These rules establish fees and procedures for the issuance of a criminal history evaluation letter.

The proposed rules are necessary to comply with amendments made to Occupations Code, Chapter 53 by House Bill (HB) 963, 81st Legislature, Regular Session (2009). HB 963 authorizes the collection of a fee for providing potential applicants a criminal history evaluation letter. All state agencies that issue licenses or certificates to engage in a particular occupation must adopt rules necessary to administer the new provisions by September 1, 2010.

SECTION-BY-SECTION

The amendments to §§140.2, 140.103, 140.153, 140.204, 140.277, 140.301, 140.403, and 140.504, and new §§140.23, 140.120, 140.169, 140.217, 140.286, 140.377, 140.431, and 140.523 contain uniform language outlining provisions for fees and procedures for the issuance of criminal history evaluation letters in the perfusionist, sanitarian, code enforcement officer, respiratory care practitioner, optician, massage therapist, chemical dependency counselor, and medical radiologic technologist regulatory programs. The criminal history evaluation letter fee is \$50 for each of the programs and the procedures are uniform among the program rules. The procedures require a person making a request for the issuance of a criminal history evaluation letter to complete and submit a request form and the applicable fee. The rules require the department to make the requested determination regarding the person's eligibility for a license and issue a criminal history evaluation letter not later than the 90th day after the date the department received the request.

FISCAL NOTE

Cindy Bourland, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five-year period that the sections are in effect, there will be fiscal revenue implications to state government as a result of administering the sections that authorize the department to charge a fee for a voluntary prescreening evaluation request from persons who may be potentially ineligible for a license based upon criminal history. The department has determined to require a fee of \$50 to screen these persons and it is estimated that approximately 195 persons in the applicable licensing programs will seek this evaluation per year. There may be an increase in revenue to the state of \$9,750 each year for the next five fiscal years. There are no fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bourland has also determined that there will be no adverse effect on small businesses or micro-businesses as those businesses are not required to comply with the sections as proposed. Small businesses and micro-businesses will not be required to alter their business practices, since the request for a criminal history evaluation letter under the proposed rules applies only to individuals and is optional. There are anticipated economic costs to persons who choose to comply with the sections as proposed and the cost is \$50 for a person who requests a criminal history evaluation letter. There is no anticipated negative impact on local employment.

Government Code, §2006.002, requires an agency to prepare an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule may have an adverse economic impact on small businesses. Only individuals who choose to request a criminal history evaluation letter under the proposed rules will be required to pay the applicable fee. Because the proposed sections will not impose fees or other requirements on small businesses, the sections will not impose an adverse economic impact on small businesses.

PUBLIC BENEFIT

In addition, Ms. Bourland has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of administering the sections is to allow potential license applicants to avoid unnecessary hardship or costs by obtaining a criminal history evaluation letter concerning the individual's potential ineligibility for a license based on criminal history.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to David Olvera, Program Director, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6768 or by email to david.olvera@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed

by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. PERFUSIONISTS

25 TAC §140.2, §140.23

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.105, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the adoption of rules regarding fees for criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment and new rule affect Occupations Code, Chapters 53, 352, 455, 504, 601, 603, 604, 1952, and 1953; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§140.2. Fees.

(a) The schedule of fees for licensure as a perfusionist or a provisional licensed perfusionist is as follows:

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

(10) verification fee--\$10 per licensee; [~~and~~]

(11) retired perfusionist license renewal issued for a two-year term (in accordance with §140.12(f) of this title relating to License Renewal)--\$175; and [-]

(12) criminal history evaluation letter fee--\$50.

(b) - (h) (No change.)

§140.23. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this section and the requestor's eligibility that the department has to investigate a person applying for a license.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th

day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201001993

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER C. SANITARIANS

25 TAC §140.103, §140.120

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.105, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the adoption of rules regarding fees for criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment and new rule affect Occupations Code, Chapters 53, 352, 455, 504, 601, 603, 604, 1952, and 1953; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§140.103. Fees.

- (a) (No change.)
- (b) The schedule of fees is as follows:
 - (1) - (7) (No change.)
 - (8) continuing education sponsor approval fee--\$100 per sponsor. Pre-approved providers are exempt from this fee; ~~and~~
 - (9) exemption fee for retired sanitarians--\$150; ~~and~~[-]
 - (10) criminal history evaluation letter fee--\$50.

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

§140.120. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a registration if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial registration or is planning to take an examination for an initial registration; and

(2) has reason to believe that the person is ineligible for the registration due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this section and the requestor's eligibility that the department has to investigate a person applying for a registration.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a registration, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201001994

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER D. CODE ENFORCEMENT OFFICERS

25 TAC §140.153, §140.169

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.105, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the adoption

of rules regarding fees for criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment and new rule affect Occupations Code, Chapters 53, 352, 455, 504, 601, 603, 604, 1952, and 1953; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§140.153. Fees.

(a) The schedule of fees is as follows:

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

(6) examination fees:

(A) department administered--\$50; or

(B) administered by department's designee--the amount specified in the contract between the department and the designee, not to exceed \$50; ~~and~~

(7) reexamination fee--\$50; and[-]

(8) criminal history evaluation letter fee--\$50.

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

§140.169. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a registration if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial registration or is planning to take an examination for an initial registration; and

(2) has reason to believe that the person is ineligible for the registration due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this section and the requestor's eligibility that the department has to investigate a person applying for a registration.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a registration, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after

the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201001995

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER E. RESPIRATORY CARE

25 TAC §140.204, §140.217

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.105, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the adoption of rules regarding fees for criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment and new rule affect Occupations Code, Chapters 53, 352, 455, 504, 601, 603, 604, 1952, and 1953; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§140.204. Fees.

The following fees are required to be paid to the department before any certificate or permit is issued. All fees shall be submitted in the form of a check or money order and are nonrefundable. The department may direct examination applicants to submit examination fees to the National Board for Respiratory Care, Inc. (NBRC).

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

(3) Criminal history evaluation letter fee--\$50.

(4) ~~[(3)]~~ Any certificate holder whose check to the department is returned marked insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the check submitted to the department plus the returned check fee within 30 days of the date of receipt of the department's notice. Failure to comply with this requirement may be the grounds for disciplinary action, up to and including denial of the certificate holder application or the revocation of the certificate. If a certificate is issued or renewed on an application processed upon the

submission of a check to the department, and if such check is later returned unpaid, the department may cancel the certificate or application if the certificate holder or applicant does not redeem the check in compliance with this section. The effect of such a cancellation shall be the same as if the application for renewal or for licensure had not been submitted.

(5) ~~[(4)]~~ If the department's notice, as set out in paragraph (4) ~~[(3)]~~ of this section, is returned unclaimed, the department shall mail the notice to the applicant or certificate holder by first class mail. If a money order or check for guaranteed funds is not received by the department's cashier within 30 days of the postmarked date on the second mailing, the approval or certificate issued shall be invalid. The department shall notify the applicant's or certificate holder's employer that the person has failed to comply with this section.

(6) ~~[(5)]~~ The department shall make periodic reviews of the fee schedule and recommend any adjustments necessary to provide sufficient funds to meet the expenses of the respiratory care practitioner certification program without creating an unnecessary surplus. Such adjustments shall be made through rule amendments approved by the Executive Commissioner of the Health and Human Services Commission.

§140.217. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a certificate if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial certificate or is planning to take an examination for an initial certificate; and

(2) has reason to believe that the person is ineligible for the certificate due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this section and the requestor's eligibility that the department has to investigate a person applying for a certificate.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a certificate, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201001996

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER G. OPTICIANS

25 TAC §140.277, §140.286

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.105, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the adoption of rules regarding fees for criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment and new rule affect Occupations Code, Chapters 53, 352, 455, 504, 601, 603, 604, 1952, and 1953; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§140.277. Fees.

(a) Schedule of fees. The fees are as follows:

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

(6) duplicate certificate fee--\$20; ~~and~~

(7) examination fee--the then current fee assessed by the Department of State Health Services' (department's) designee for the examination; and[-]

(8) criminal history evaluation letter fee--\$50.

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

§140.286. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a registration if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial registration or is planning to take an examination for an initial registration; and

(2) has reason to believe that the person is ineligible for the registration due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by

the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this section and the requestor's eligibility that the department has to investigate a person applying for a registration.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a registration, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201001997

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER H. MASSAGE THERAPISTS

DIVISION 1. THE DEPARTMENT

25 TAC §140.301

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §§53.105, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the adoption of rules regarding fees for criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Occupations Code, Chapters 53, 352, 455, 504, 601, 603, 604, 1952, and 1953; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§140.301. Fees.

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

(k) Criminal history evaluation letter fee--\$50.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201001998

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 6, 2010

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



DIVISION 7. COMPLAINTS, VIOLATIONS AND SUBSEQUENT DISCIPLINARY ACTIONS

25 TAC §140.377

STATUTORY AUTHORITY

The new rule is authorized by Occupations Code, §§53.105, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the adoption of rules regarding fees for criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rule affects Occupations Code, Chapters 53, 352, 455, 504, 601, 603, 604, 1952, and 1953; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§140.377. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this section and the requestor's eligibility that the department has to investigate a person applying for a license.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201001999

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER I. LICENSED CHEMICAL DEPENDENCY COUNSELORS

25 TAC §140.403, §140.431

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.105, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the adoption of rules regarding fees for criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment and new rule affect Occupations Code, Chapters 53, 352, 455, 504, 601, 603, 604, 1952, and 1953; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§140.403. Fees.

(a) The schedule of fees is:

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

(8) clinical supervisor initial and renewal application and certification fee--\$20; and[-]

(9) criminal history evaluation letter fee--\$50.

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

§140.431. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this section and the requestor's eligibility that the department has to investigate a person applying for a license.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201002000

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 6, 2010

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



SUBCHAPTER J. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §140.504, §140.523

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.105, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the adoption of rules regarding fees for criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment and new rule affect Occupations Code, Chapters 53, 352, 455, 504, 601, 603, 604, 1952, and 1953; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§140.504. Fees.

(a) (No change.)

(b) The schedule of fees is as follows:

(1) - (23) (No change.)

(24) returned check fee--\$50; [~~and~~]

(25) retired medical radiologic technologist biennial renewal fee--\$25; and[-]

(26) criminal history evaluation letter fee--\$50.

(c) - (j) (No change.)

§140.523. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a certificate if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial certificate or is planning to take an examination for an initial certificate; and

(2) has reason to believe that the person is ineligible for the certificate due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this section and the requestor's eligibility that the department has to investigate a person applying for a certificate.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a certificate, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after

the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

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

Filed with the Office of the Secretary of State on April 23, 2010.

TRD-201002001

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 6, 2010

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



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 141. DISPUTE RESOLUTION-- BENEFIT REVIEW CONFERENCE

28 TAC §§141.1, 141.2, 141.4, 141.7

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to §§141.1, 141.2, 141.4, and 141.7 of this title (relating to Requesting and Setting a Benefit Review Conference, Canceling or Rescheduling a Benefit Review Conference, Filing and Exchanging Pertinent Information, and Division Actions After Benefit Review Conference respectively). These proposed amendments streamline procedures and clarify responsibilities of the system participants. These changes are intended to make the dispute resolution process more efficient and effective by requiring early communication and information exchange between the parties, tightening scheduling requirements, and clarifying procedures.

These amendments are necessary to implement statutory provisions of House Bill 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005 (HB 7). HB 7 amended Chapter 410, Subchapter A of the Labor Code by adding §410.007 regarding useful information for a Benefit Review Conference (BRC). It also amended Chapter 410, Subchapter B of the Labor Code by amending §410.023 regarding documentation of prior efforts to resolve a dispute before a request for a BRC and §410.026 regarding powers and duties of a Benefit Review Officer (BRO).

Labor Code §410.007 requires the Division to determine the type of information that is most useful to parties to help resolve disputes regarding benefits and to publish a list of such information in appropriate media, including the Division's internet website.

Labor Code §410.023 requires the party requesting the BRC to provide documentation of efforts made to resolve the dispute

before requesting the BRC. It also directs the Commissioner of Workers' Compensation (Commissioner) to adopt guidelines by rule regarding the type of information necessary to satisfy this requirement.

Labor Code §410.026 provides that a BRO may schedule an additional BRC if the BRO determines that available information pertinent to the resolution of disputed issues was not produced at the initial BRC and a second BRC has not already been conducted. If any disputed issues remain unresolved after the first BRC and a second BRC has not been scheduled to address the issues, the parties may proceed directly to a Contested Case Hearing (CCH).

The Division published an informal draft of the rule on the Department's website in November, 2009 and received 17 informal comments from system participants. The Division made several changes and other revisions to this proposal draft as a result of the informal comments.

Nonsubstantive changes were also made to conform to Labor Code requirements, current nomenclature, reformatting and for clarification of terms.

Proposed amendment of §141.1. Proposed new subsection (a) provides that, prior to requesting a BRC, a disputing party must notify the other party or parties of the nature of the dispute and attempt to resolve the dispute, as required by Labor Code §410.023.

Proposed subsection (b) adds that an employer may request a BRC to contest compensability when an insurance carrier has accepted the claim as compensable pursuant to Labor Code §409.011.

Proposed new subsection (c) clarifies that a request for a BRC by a subclaimant under Labor Code §409.009 must also comply with the requirements of §140.6 of this title (relating to Subclaimant Status; Establishment, Rights and Procedures). Language allowing an unrepresented injured employee to request a benefit review conference by contacting the Division in any manner is revised because the proposed rule in subsection (d), requires a request for a BRC to contain certain minimum information in order to be a complete request. Proposed subsection (d) sets forth that a request for a BRC must be made as specified by the Division.

Proposed subsection (d)(1) contains existing rule language, which continues to require the requestor to identify and describe the disputed issue or issues.

Proposed new subsection (d)(2) clarifies that the request for a BRC requires that a party requesting a BRC must provide details and supporting documentation of efforts made to resolve the disputed issues. The documentation should be of contacts and communications with the opposing party or parties. Examples of efforts to resolve may include, but are not limited to, notification provided in accordance with subsection (a), correspondence, e-mails, facsimiles, records of telephone contacts, or summaries of meetings or telephone conversations in an attempt to resolve the dispute. The requesting party is not required to attach the pertinent information exchanged with the opposing party or parties when it sends its request for a BRC to the Division. However, the pertinent information must be sent to the Division 14 days prior to the BRC.

Proposed new subsection (d)(3) requires that the request contain a signature by the requesting party attesting that reasonable efforts have been made to resolve the disputed issue or issues

prior to requesting a BRC and that any pertinent information in their possession has been provided to the other parties as required by §141.4(c).

Proposed new subsection (d)(4) requires that the request for the BRC be sent to the Division and to the opposing party or parties.

Proposed new subsection (e) defines a complete request for a BRC as a request that meets the requirements of subsection (d) of §141.1. Proposed new subsection (e) was added in response to comments to the informal draft of the rule asking for a definition of a complete request for a BRC.

Proposed new subsection (f) specifies that a request for a BRC that does not meet the requirements of subsection (d) of this section is an incomplete request and will be denied. The proposed new subsection clarifies that a denied request for a BRC does not constitute a dispute resolution proceeding except as provided by subsection (g), and that the Division will notify the parties if a request is denied. Upon notice from the Division, the requesting party may submit a new request for a BRC that meets the requirements of a complete request, at which point a BRC will be scheduled.

Proposed new subsection (g) provides dispute resolution for parties whose request for a BRC is denied. If a party disagrees with the Division's determination that the request was incomplete or if a party has good cause for failing to meet the requirements for a complete request, the party may pursue an administrative appeal of the Division's determination in accordance with Chapter 142 of this title (relating to Dispute Resolution--Benefit Contested Case Hearing). The party may also request an expedited CCH in accordance with §140.3 of this title (relating to Expedited Proceedings). Good cause will be determined in the CCH on a case by case basis by a hearing officer, after presentation of evidence and arguments. This provision was added to reflect the Division's authority to streamline the BRC process and also provide a method for parties to show good cause for failing to meet the requirements of subsection (d).

Proposed amendment of §141.2. The proposed amendments to subsections (b), (c) and (d) clarify that this section applies both to cancellation or rescheduling of a BRC. Subsection (b) is further amended to remove the docket clerk as the only person to cancel or reschedule a BRC and instead provide the field office managing the claim with that responsibility. This change was made to allow maximum flexibility in consolidating the management of the docketing function, including alternative field office business models. Subsection (c) is amended to require a request to cancel or reschedule a BRC after the 10 day unrestricted cancellation period shall be in writing unless waived by the Division. The request must also be sent to the field office managing the claim and opposing party or parties. The written request shall be granted only on a showing of good cause. These changes were made to encourage parties to be prepared to move forward with a BRC once a BRC is requested and to discourage unnecessary BRC scheduling delays.

Proposed amendment of §141.4. Proposed amended subsection (a) adds "reports regarding the compensable injury" to the existing list of examples of pertinent information, which parallels the requirement laid out in Labor Code §410.007.

Proposed new subsection (b) informs the public that examples of "Pertinent Information" are listed on the Division's website, www.tdi.state.tx.us/wc, under "Information for Participants in a Benefit Review Conference".

Proposed new subsection (c) clarifies that all pertinent information described in proposed amended subsections (a) and (b), not previously exchanged, in the possession of the party requesting a BRC, must be sent to the opposing party or parties before the time the request for a BRC is sent to the Division. This new requirement furthers the intent of the rule to make the dispute resolution process more efficient and effective.

Proposed new subsection (d) requires the opposing party to send all pertinent information in its possession, not previously exchanged, to the requesting party, and other parties, within 10 calendar days after receiving a copy of the request for a BRC. This new requirement also furthers the intent of the rule to make the dispute resolution process more efficient and effective by requiring the parties to be better prepared at the first BRC on a disputed issue. The intent of this provision is for parties to exchange a given document only one time and continue to supplement up to the scheduled BRC date.

Proposed amended subsection (e), clarifies that the parties are to send pertinent information to the Division 14 days prior to the BRC. This addresses the concern of having to send the same documents to the Division multiple times in the event that an initial request for a BRC is rejected. The requesting party can wait until after a BRC is scheduled before sending any documents to the Division. However, the parties must exchange documents early on, as provided by these rules and proposed amended subsection (e) also requires the parties to exchange any additional pertinent information that was not previously exchanged no later than 14 days prior to the BRC.

Proposed amended subsection (f), states that additional pertinent information that becomes available up to the time of the BRC shall be brought to the BRC in sufficient copies for the Division and opposing party or parties.

Proposed amended subsection (g), clarifies that the BRO may schedule a second BRC upon a determination that pertinent information necessary to resolve the dispute has not been submitted or exchanged. In accordance with Labor Code §410.026, no more than two BRCs may be scheduled on a disputed issue.

Proposed new subsection (h) states that information provided to the Division will not be retained at the conclusion of the BRC process and explains how and when the BRC is concluded for the purpose of information retention. The purpose of this provision is to reinforce the parties' responsibilities to retain information related to their disputed issues through the dispute resolution process. Disputed issues that remain unresolved at the BRC and are set for a CCH will continue to be subject to the exchange requirements laid out in Labor Code §410.160 and 28 TAC §142.4 and §142.13.

Proposed amendment of §141.7. The proposed changes to §141.7 conform the rule to the requirements of Labor Code §§410.029, 410.031 and 410.034. They clarify the different post-BRC procedures for when all issues are resolved at the BRC, when there are unresolved issues after the first BRC, and when there are unresolved issues after the second BRC.

Daniel Barry, Acting Deputy Commissioner of Hearings, has determined that for each year of the first five years the proposed rules will be in effect there will be minimal fiscal implications to state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of the proposed rules.

Mr. Barry has determined that the proposed rules will help to improve the efficiency of scheduled BRC sessions. During fiscal year 2009 (September 1, 2008 - August 31, 2009), the Division tracked 1,628 BRCs that were reset, out of 13,421 BRCs set, because BRC participants required more time to prepare. Because the proposed rules will accelerate the exchange of pertinent information between the parties, more participants should be prepared for the first BRC, and the number of rescheduled BRCs should be significantly reduced for each of the first five years the proposed rules will be in effect.

There will be no fiscal implication to local governments as a result of enforcing or administering the proposed amendments.

Local Government and State Government as a Covered Entity. Local government and state government as a covered regulated entity will be impacted in the same manner as persons required to comply with the proposed amendments as described later in the preamble.

Local employment and local economy. Mr. Barry has determined that for each year of the first five years the sections are in effect, the proposed amendments will not have a measurable effect on local employment or the local economy as a result of the proposed amendments.

Mr. Barry has also determined that for each year of the first five years the proposed rules will be in effect the public benefit anticipated as a result of enforcing the rules will be more timely, appropriate and efficient resolution of disputes.

The proposed rules should eventually decrease costs for the system overall because the proposed sections are intended to make the dispute resolution process more efficient and effective. The communication and documentation requirements prior to requesting a BRC will open communication and exchange of information between the parties at a much earlier stage and lead to more disputes being resolved between the parties by agreement, more disputes being resolved at the first BRC and fewer disputes going to a CCH. These requirements will also reduce the number of unnecessary multiple BRCs on disputed issues and will help the Division redirect its resources towards its statutory directive to resolve disputes promptly and fairly

Insurance Carriers. The documentation required for insurance carriers, including self-insureds, are records that insurance carriers keep for claim evaluation in the ordinary course of business. Insurance carriers will be responsible for maintaining a copy of the information that was exchanged for the disputed issue after 90 days from the conclusion of the first BRC if an agreement is reached, if a CCH has been set or if a second BRC has not been requested since the Division will no longer retain that information. In addition, the requirements to exchange pertinent information with the other parties are not new requirements. The current rules require the parties to exchange documents 14 days prior to the BRC. The proposed rules impose new requirements on the parties that may result in additional copying and postage costs. To comply with Labor Code §410.023 and proposed §141.1, the parties must attempt to resolve the dispute prior to requesting a BRC. That attempt may involve an exchange of documents. Additionally, proposed §141.4 requires the requestor to send all pertinent information in its possession not previously exchanged to the opposing party at the time it files the request for a BRC with the Division. The opposing party must send all pertinent information in its possession not previously exchanged to the requesting party 10 calendar days after it receives a copy of the request for a BRC. Proposed §141.4 also requires both the requesting

and opposing parties to exchange any additional pertinent information that was not previously exchanged and send a copy of all pertinent information to the Division no later than at least 14 days prior to the BRC. As a result of these exchange requirements, there will be additional copying and postage costs associated with these requirements. The cost will vary depending on the volume of information being exchanged. The cost of copying the information is estimated at \$.10 cents a page and postage will be at a minimum of \$.84 cents. The copying and postage costs to comply with the current 14 day requirement should be less than currently because many documents will have been previously exchanged.

Adjusters, Attorneys and Lay Representatives. Adjusters, attorneys, and lay representatives requesting BRCs and appearing in BRCs on behalf of all parties will likely require from five to eight hours of preparation time for the first BRC as a result of this proposal. This is not additional time, but rather a shifting of time that is currently spent later in the process. This proposal "front end loads" the communication and information exchange requirements to encourage earlier resolution of disputes and to encourage better preparation for the first BRC. These parties may incur additional preparation time for the first BRC since they will have access to more pertinent information related to the disputed issue prior to the BRC, instead of exchanging this information during the BRC.

However, these additional preparation costs will eventually be offset in terms of savings from fewer second BRCs or unnecessary CCHs because of better preparation on the part of the parties.

Subclaimants. Subclaimants would likely incur the comparative cost of adjusters unless they were represented by defense counsel.

Injured employees. With the Office of Injured Employee Counsel ombudsman program or attorney representation, the injured employee has the ability to keep costs at a minimum. There will be more investment in time rather than money since the proposal would not raise the cost of copying or other charges but merely in organizing the materials to be presented at the BRC. Injured employees will be responsible for maintaining a copy of the information that was exchanged for the disputed issue after 90 days from the conclusion of the first BRC if an agreement is reached, if a CCH has been set or if a second BRC has not been requested since the Division will no longer retain that information. There will be additional postage costs for exchanging pertinent information at the time of the BRC request. The cost will depend on the volume of document exchange or exchanges that occur between the parties and is estimated to be upwards of a minimum of \$.42 cents per exchange. There will also be the cost of submitting documentation to the Division of efforts made by the disputing party to resolve the dispute prior to requesting the BRC. This required documentation under §141.1(a) and (d) is estimated to be approximately one to five pages. At the cost of \$.10 cents a page for copying and \$.42 cents for postage, it would cost approximately \$.52 cents to \$.92 cents more to injured employees to submit documentation of efforts.

However, injured employees will also benefit by being able to obtain pertinent information relating to their disputed issue from insurance carriers and health care providers prior to the date the BRC is held, which will allow injured employees to be better prepared for their dispute proceedings and will result in quicker resolution of their disputes once a BRC is requested. Injured employees who are better prepared at the first BRC on a disputed

issue may incur fewer attorney fees if they are represented by an attorney during the BRC.

Employers. Employers would likely incur the comparative costs of adjusters unless they were represented by defense counsel.

As required by the Government Code §2006.002(c), the Division has determined that the proposal will not have an adverse economic effect on the small and micro-businesses that may be required to comply with the proposed amendments.

The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on Monday May 7, 2010. Comments may be submitted via the internet through the Division's internet website at <http://www.tdi.state.tx.us/wc/rules/proposedrules/index.html>, by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Any request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. CST before the close of the comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

These rules are proposed under the Labor Code §§410.007, 410.023, 410.026, 410.025, 410.027, 402.00116, 402.00111, 402.061, 402.00128, 410.021, 410.029, 410.031, 410.034, 410.151, 410.154, 415.021, 415.002, 415.001, 415.003, 415.0035, 415.024 and 409.009. Section 410.007 requires the Division to determine the type of information that is most useful to parties to help resolve disputes regarding income benefits and to publish a list of such information in appropriate media, including its internet website. Section 410.023 requires the party requesting the BRC to provide documentation of efforts made to resolve the dispute before requesting the BRC and directs the Commissioner to adopt guidelines by rule regarding the type of information necessary to satisfy this requirement. Section 410.026 denotes the powers and duties of a benefit review officer including the power to schedule no more than two BRCs on a disputed issue. Section 410.025 authorizes the Commissioner to prescribe the scheduling of BRCs and expedited hearings, and the required notice related to the scheduling. Section 410.027 specifies that the Commissioner shall adopt rules for conducting BRCs. Section 402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce Title 5, Labor Code, and other laws applicable to the Division or Commissioner. Section 402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under Title 5, Labor Code. Section 402.061 provides the Commissioner the

authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Section 402.00128 vests general operational powers to the Commissioner including the authority to delegate, and assess and enforce penalties as authorized by Title 5, Labor Code. Section 410.021 sets forth the BRC as a nonadversarial and informal proceeding within the dispute resolution process which purpose is designed to explain, discuss, mediate and resolve disputed issues by agreement of the parties. Section 410.029 provides that a dispute may be resolved either in whole or in part at a BRC, and that the results must be reduced to writing and signed. Section 410.031 requires that the benefit review officer must prepare a detailed written report if there is an incomplete resolution at the BRC. Section 410.034 requires the Commissioner to prescribe the times within which the BRC agreement and report must be filed. Section 410.151 provides for the issues that can be addressed at a CCH. Section 410.154 provides for the scheduling of a CCH. Section 415.021 provides for assessment of administrative penalties if a person fails to comply with or refuses to comply with a rule and allows the Commissioner to assess an administrative penalty not to exceed \$25,000 per day per occurrence. Section 415.002 provides that an insurance carrier or its representative commits an administrative violation if the carrier or representative engages in specified prohibited acts including violation of a Commissioner rule or noncompliance with a specific provision. Section 415.001 sets forth certain acts by a representative of an injured employee or legal beneficiary as administrative violations. Section 415.003 sets forth certain acts by a health care provider as administrative violations. Section 415.0035 also enumerates additional administrative violations by an insurance carrier or health care provider including violation of the subtitle or rule. Section 401.024 defines "electronic transmission" as the transmission of information by facsimile, electronic mail, electronic data interchange, or any other similar method. Section 409.009 provides for the filing of written claims with the Division as a subclaimant.

The following statutes are affected by this proposal: §§141.1, 141.2, 141.4 and 141.7, §§401.024, 402.00111, 402.00116, 402.00128, 402.061, 409.009, 410.021, 410.023, 410.025, 410.026, 410.027, 410.029, 410.031, 410.34, 410.151, 410.154, 415.001, 415.002, 415.003, 415.0035, 415.0036 and 415.

§141.1. Requesting and Setting a Benefit Review Conference.

(a) Prior Notification. Prior to requesting a benefit review conference, a disputing party must notify the other party or parties of the nature of the dispute and attempt to resolve the dispute.

(b) Who May Request. A request for a benefit review conference may be made by an injured employee [a claimant], a subclaimant, or an insurance [a] carrier. An[-, or an] employer may request a benefit review conference to contest compensability when the insurance carrier has accepted the claim as compensable [who has contested compensability].

(c) Subclaimant. A request for a benefit review conference made by a subclaimant under Labor Code §409.009 must also comply with the requirements of §140.6 of this title (relating to Subclaimant Status: Establishment, Rights and Procedures).

(d) Request for Benefit Review Conference. A [Except as provided in subsection (e) of this section, a] request for a benefit review conference shall[-]

[(+) be made in the form and manner required by the division. The request shall: [on Form TWCC 45, Request for Setting a Benefit Review Conference;]

(1) ~~[(2)] identify and describe the disputed issue or issues; [and]~~

(2) provide details and supporting documentation of efforts made by the requesting party to resolve the disputed issues, including but not limited to, copies of the notification provided in accordance with subsection (a) of this section, correspondence, e-mails, facsimiles, records of telephone contacts, or summaries of meetings or telephone conversations. For the purposes of this subsection, copies of the notification provided in accordance with subsection (a) of this section, correspondence, e-mails, facsimiles, records of telephone contacts, or summaries of meetings or telephone conversations should not include all attachments of pertinent information exchanged with the opposing party or parties as required by §141.4 of this title (relating to Sending and Exchanging Pertinent Information);

(3) contain a signature by the requesting party attesting that reasonable efforts have been made to resolve the disputed issue(s) prior to requesting a benefit review conference, and that any pertinent information in their possession has been provided to the other parties as required by §141.4(c) of this title; and

(4) be sent to the division and opposing party or parties.

~~[(3) be sent to the commission.]~~

(e) Complete Request. A request that meets the requirements of subsection (d) of this section is a complete request for a benefit review conference. Upon receipt of a complete request, the division will schedule a benefit review conference.

(f) Incomplete Request. A request for a benefit review conference that does not meet the requirements of subsection (d) of this section is an incomplete request and will be denied. A denied request for a benefit review conference does not constitute a dispute proceeding, except as provided by subsection (g) of this section. The division will notify the parties if a request is denied. Upon notice from the division, the requesting party may submit a new request for a benefit review conference that meets the requirements of this section.

(g) Incomplete Request Denials. If a party disagrees with the division's determination that the request was incomplete, or, if a party has good cause for failing to meet the requirements of subsection (d) of this section, the party may pursue an administrative appeal of the division's determination in accordance with Chapter 142 of this title (relating to Dispute Resolution--Benefit Contested Case Hearing). The party may also request an expedited contested case hearing in accordance with §140.3 of this title (relating to Expedited Proceedings).

(h) Setting. The division will schedule a benefit review conference within 40 days after a complete request is received by the division. An expedited benefit review conference shall be set by the division within 20 days after a complete request is received by the division, if the division determines that an expedited setting is needed.

~~[(e) An unrepresented claimant may request a benefit review conference by contacting the commission in any manner. The commission shall acknowledge to the claimant in writing receipt of the request.]~~

~~[(d) The commission shall set a conference to be held:]~~

~~[(1) within 40 days of the date the request is received; or]~~

~~[(2) if the commission determines that an expedited setting is needed, as provided by §140.3 of this title (relating to Expedited Proceedings), within 20 days of the date the request is received.]~~

(i) Notice. After setting the benefit review conference, the division [commission] shall provide, by first class mail, electronic transmission, or personal delivery, written notice of the date, time, and

location to the parties and to the employer. ~~[The notice shall be provided:]~~

~~[(1) at least 30 days before a conference set under subsection (d)(1) of this section; or]~~

~~[(2) at least 10 days before a conference set under subsection (d)(2) of this section]~~

~~(j) [(f)] Site. The benefit review conference will be conducted at a site no more than 75 miles from the injured employee's [claimant's] residence at the time of injury, unless the division [commission] determines that good cause exists for selecting another site.~~

§141.2. Canceling or Rescheduling a Benefit Review Conference.

~~(a) The division [commission] may cancel or reschedule a benefit review conference:~~

- ~~(1) on its own motion;~~
- ~~(2) at the request of the party who requested the conference; or~~
- ~~(3) at the mutual request of the parties.~~

~~(b) A request for cancellation or rescheduling shall be made by notifying [the docket clerk of] the field office managing the claim within 10 days of the date the notice of setting is received. The date the notice of setting is received is deemed to be the fifth day after the date of the notice. Cancellation or rescheduling requests made during this 10-day period are unrestricted unless a pattern of abuse is detected.~~

~~(c) Cancellation or rescheduling requests made after the unrestricted cancellation period defined in subsection (b) of this section shall be in writing unless waived by the division and sent to the field office managing the claim and opposing party or parties. The request shall [will] be granted only on a showing of good cause. Good cause may include, but is not limited to, the following:~~

- ~~(1) the parties independently resolved the disputed issue or issues by agreement or settlement, as provided by Chapter 147 of this title (relating to Dispute Resolution--Agreements, Settlements, Commutation);~~
- ~~(2) the conference was scheduled with the wrong insurance carrier;~~
- ~~(3) the injured employee no longer desires to pursue the issue [claim];~~
- ~~(4) the injured employee has died [dies] and no additional benefits appear due; or~~
- ~~(5) illness of a party.~~

~~(d) The division [commission] will notify the parties of a cancellation or rescheduling of a benefit review conference in a timely manner.~~

§141.4. Sending [Filing] and Exchanging Pertinent Information.

~~(a) As used in this chapter [section] "pertinent information" means all information relevant to the resolution of the disputed issue or issues to be addressed at the benefit review conference, including but not limited to:~~

- ~~(1) reports regarding the compensable injury;~~
 - ~~(2) the injured employee's wage records; and~~
 - ~~(3) the injured employee's medical records.~~
- ~~[(1) information relating to the employee's wages;]~~
~~[(2) information relating to the employee's medical condition;]~~

~~[(3) witness statements; and]~~

~~[(4) the names of witnesses who will attend the conference.]~~

~~(b) Examples of "pertinent information" are listed on the division's website, www.tdi.state.tx.us/wc, under "Information for Participants in a Benefit Review Conference".~~

~~(c) All pertinent information, as described in subsections (a) and (b) of this section, not previously exchanged, in the possession of the party requesting a benefit review conference must be sent to the opposing party or parties before the time the request for a benefit review conference is sent to the division.~~

~~(d) The opposing party must send all pertinent information in its possession, not previously exchanged, to the requesting party and other parties within 10 calendar days after receiving a copy of the request for a benefit review conference.~~

~~(e) [(f)] Not later than 14 days before the benefit review conference, or not later than five days before an expedited conference set under §141.1(d)(2) of this title (relating to Requesting and Setting a Benefit Review Conference):~~[-]~~~~

~~(1) all pertinent information in the parties' possession not previously sent to the division shall be~~[-]~~~~

~~[(1)] sent to the division [commission by the parties]; and~~

~~(2) all pertinent information in the parties' possession not previously exchanged must be sent to the other parties.~~

~~[(2) exchanged with one another.]~~

~~(f) [(e)] Additional pertinent [Pertinent] information that becomes available thereafter shall be brought to the conference in sufficient copies for the division and opposing party or parties [filing and exchange].~~

~~(g) [(d)] The benefit review officer may schedule [reschedule] a second conference upon a determination that pertinent information necessary to resolve the dispute has not been submitted or exchanged. No more than two benefit review conferences may be scheduled for each disputed issue.~~

~~(h) Information provided to the division will not be retained by the division after the conclusion of the benefit review conference. The benefit review conference is an informal process and no record of evidence is taken. The benefit review conference is concluded for the purpose of information retention when the parties reach an agreement on the issues, have unresolved issues set for a contested case hearing, or fail to reschedule a second benefit review conference within at least 90 days after the first benefit review conference.~~

§141.7. Division Actions After a Benefit Review Conference.

~~(a) All Issues Resolved. Division actions if all issues are resolved at the benefit review conference.~~

~~(1) If all issues in dispute are resolved at the benefit review conference by agreement or settlement, the agreement or settlement must be reduced to writing and signed by each party and their designated representative, if any, and the benefit review officer.~~

~~(2) The benefit review officer shall make the agreement part of the claim file. If all issues in dispute are resolved at the benefit review conference by settlement, the benefit review officer shall submit the signed settlement to the commissioner or commissioner's designee for handling as provided by Chapter 147 of this title (relating to Dispute Resolution by Agreement or Settlement). If the commissioner or commissioner's designee rejects the settlement, the parties may request:~~

(A) a second benefit review conference, if a second benefit review conference has not already been held; or

(B) a contested case hearing.

~~{(a) If all disputed issues are resolved at the benefit review conference by agreement, the benefit review officer shall make the agreement part of the claim file.}~~

~~{(b) If all disputed issues are resolved at the benefit review conference by settlement, the benefit review officer shall submit the signed settlement to the Commissioner or Commissioner's designee for handling as provided by Chapter 147 of this title (relating to Dispute Resolution by Agreement or Settlement). If the Commissioner or Commissioner's designee rejects the settlement, the parties may request a subsequent benefit review conference as provided by §141.1 of this title (relating to Requesting and Setting a Benefit Review Conference).}~~

(b) Issues Not Resolved. Division actions if issues are not resolved at the benefit review conference.

(1) [(e)] After First Benefit Review Conference. If all [disputed] issues in dispute are not resolved at the first benefit review conference, the benefit review officer may set a second benefit review conference or a contested case hearing [no later than the fifth day after the close of the benefit review conference the benefit review officer shall submit a written report, as provided by Labor Code §410.031 and any signed agreement to the Division's central office in Austin].

(2) After Second Benefit Review Conference. If all issues in dispute are not resolved at the second benefit review conference, a contested case hearing will be scheduled by the benefit review officer.

(c) Written Report. Within five days after the benefit review conference is closed, the benefit review officer shall submit the written report and any signed agreements to the division's central office in Austin in accordance with Labor Code §410.031 and §410.034.

(d) Copies of Report and Hearing Notice. The division [No later than the eighth day after receiving the benefit review officer's report, the Division] shall send [furnish, by first class mail, electronically, or personal delivery,] to the injured employee; injured employee's representative, if any; the insurance carrier; subclaimants; and the employer the following:

- (1) a file-stamped copy of the report; and
- (2) notice of the date, time, and location of the contested case hearing.

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

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002026

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: June 6, 2010

For further information, please call: (512) 804-4703



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER D. APPRAISAL REVIEW BOARD

34 TAC §9.802

(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 Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Comptroller of Public Accounts proposes the repeal of §9.802, concerning affidavits for protest hearings. The proposed repeal is a result of a rule review of Texas Administrative Code, Title 34, Part 1, Chapter 9, Subchapter D, conducted by the comptroller. The rule review was performed pursuant to Government Code, §2001.039 and resulted in a determination that the reasons for initially adopting §9.802 no longer exist.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the repeal will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result would be improving the administration of local property valuation and taxation. The proposed repeal would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the repeal may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeal is proposed pursuant to Government Code, §2001.039(c), which authorizes the repeal of a rule upon agency assessment in conducting a rule review that the reasons for initially adopting the rule no longer exist.

The repeal implements Government Code, §2001.039.

§9.802. Affidavit for Protest Hearing.

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

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002018

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: June 6, 2010

For further information, please call: (512) 936-6472



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 99. GENERAL PROVISIONS

SUBCHAPTER C. MISCELLANEOUS

37 TAC §99.90

The Texas Youth Commission (TYC) proposes an amendment to §99.90, concerning vehicle fleet management. The amended section will include a new vehicle pool category for TYC's law enforcement vehicles. The amended section will also revise several management responsibilities concerning oversight of the agency's fleet. Subsection (b)(2) will be amended to more closely track reporting requirements concerning vehicles assigned to law enforcement officers as published in the Office of Vehicle Fleet Management's State Vehicle Fleet Management Plan. Additionally, the amended section will no longer contain general driving requirements for individual agency drivers, as these requirements are more thoroughly addressed in TYC's personnel policies and do not directly relate to fleet management practices.

Pamela Darden, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

Pamela Darden has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be compliance with the State Vehicle Fleet Management Plan, as adopted by the Comptroller's Office of Vehicle Fleet Management.

There will be no effect on small businesses or micro-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 Steve Roman, Policy Coordinator, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to steve.roman@tyc.state.tx.us.

The amended section is proposed under (1) Human Resources Code §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions; and (2) Government Code §2171.1045, which requires each state agency to adopt rules, consistent with the management plan adopted by the Office of Vehicle Fleet Management, relating to the assignment and use of the agency's vehicles.

The proposed rule implements Human Resources Code, §61.034.

§99.90. *Vehicle Fleet Management.*

(a) Purpose. The purpose of this policy is to establish the authority and responsibility for management and operation of the Texas Youth Commission (TYC) vehicle fleet and to adopt the rules and procedures mandated in the State Comptroller's Texas Procurement and Support Services Division (TPASS) [Texas Building Procurement Commission (TBPC)] Office of Vehicle Fleet Management's (OVFM) State Vehicle Fleet Management Plan in accordance with §2171.104 [Section 2171.104], Government Code.

(b) Definitions [Explanation of Terms Used].

(1) Fleet Manager--a TYC employee in the Central Office Support Services Department who is responsible for day-to-day agency-wide fleet management. Responsibilities include guidance to Central Office and field fleet motor pool operations and maintenance, data collection and reporting, and acting as the central point of contact with the TPASS [TBPC] OVFM.

(2) Office of Vehicle Fleet Management (OVFM)--the primary office at the TPASS [TBPC] that developed, under direction of the

Council on Competitive Government, the *State Vehicle Fleet Management Plan* and is responsible for the development and implementation of actions for improving administration and operation on the state's vehicle fleet. The OVFM has the authority to review agencies' vehicle utilization and receive data relative to agencies' fleet operations and maintenance. It has ultimate authority to establish and also to reduce an agency's vehicle authorization levels based on defined utilization criteria.

(3) Vehicle Control Officer (VCO)--a TYC employee responsible for managing [to manage] the assigned vehicle fleet at each agency location and acting [act] as liaison [and point of contact] with the agency fleet manager. In Central Office, the fleet manager is the VCO. In TYC regions, the regional business manager is the VCO.

(4) Vehicle Utilization Monitoring Group [Board (VUB)]-a special TYC group [Board] appointed by the [deputy] executive director or designee and chaired by the chief financial officer [assistant deputy executive director for financial support] with cross functional members that represent significant staff user groups and business staff to [from the TYC Finance and Juvenile Corrections Departments that] oversee development and implementation of TYC fleet management policy, and make recommendations to executive management [the Executive Committee] relative to agency vehicle fleet matters such as vehicle authorization levels, purchasing, and replacement.

(5) Mission Critical Vehicles--the vehicles assigned to individuals identified as critical to the needs and mission of the agency [in key mission critical positions required] by the executive director or designee. These individuals are required to commute in designated vehicles.

(6) Administrative Support Vehicles--the vehicles assigned to agency locations, including sedans and vans that are used to transport staff to training, meetings, and other specific off-site staff responsibilities.

(7) Maintenance and Supply Vehicles--the assigned trucks and cargo vans used for the conduct of the basic logistics support (maintenance, supply, purchasing, delivery, etc.) function.

~~[(8) Student Security and Client Support Vehicles--the vans used in conjunction with the campus security or youth transport functions.]~~

~~[(9) Special Requirements Vehicles--the heavy equipment or special purpose vehicles, such as dump trucks, fire trucks, and staked flatbed trucks, specifically authorized at some TYC locations because of unique circumstances or need.]~~

~~[(e) Applicability. This rule applies to all TYC staff and volunteers under certain circumstances.]~~

(c) ~~[(d)]~~ Fleet Management Structure.

(1) The TYC executive director or designee [Executive Committee] will provide executive-level [executive level] oversight and support and serve as [be] the final approval authority for major vehicle fleet decisions relative to policy, authorization levels, and appropriations requests based on the recommendations of the TYC Vehicle Utilization Monitoring Group [VUB] and agency fleet manager.

~~[(2) The deputy executive director will appoint members to a cross-functional agency VUB.]~~

(2) ~~[(3)]~~ The fleet manager, in coordination with the Vehicle Utilization Monitoring Group, will make allocation, distribution, purchasing, replacement, repair, and [assignment and use,] disposal decisions/recommendations [decisions and recommendations] to the executive director or designee [VUB and Executive Committee] as appro-

priate. In consultation with the director responsible for facility business management, the [The] fleet manager will coordinate [eordinates] the rotation of authorized vehicles between agency locations based on mission and utilization requirements.

(3) [(4)] VCOs [The VCO will be the fleet manager in Central Office, business manager at the institutions, superintendent at the halfway houses, and quality assurance administrator/parole supervisor at the service areas. VCO's] are responsible for ensuring maintenance and repair of vehicles, scheduling use of motor pool vehicles, collecting and reporting fleet data, securing and issuing keys and fuel cards and documenting return of same. [The VCO is required to sign the Agreement for Vehicle Control Officer form, BSD-807 and submit the form to the fleet manager in Central Office.]

(d) [(e)] Vehicle Fleet Size. TYC will comply with all purchasing restrictions as outlined in the *State Vehicle Fleet Management Plan*. TYC will not exceed the current vehicle fleet size that is mandated by OVFM, except in cases of legislatively mandated program changes, federal program initiatives, or documented need resulting from program growth or changes that would increase the authorized fleet size. The fleet manager must certify in writing to OVFM any vehicles purchased due to legislatively mandated program changes, federal program initiatives, or need resulting from program growth or changes. All such waiver requests must be received in writing from the executive director or designee and documentation must fully specify the mandate or need to exceed the vehicle cap.

(e) [(f)] Explanation of Motor Pool.

(1) TYC will form statewide motor pools based on the primary function or utilization of each vehicle. Each agency vehicle will be assigned within an agency motor pool at a specific location and made available for checkout for official duty purposes where applicable. Each agency location will be authorized a specific number of vehicles within each designated utilization pool based on relative size or unique mission requirements. Vehicles will be rotated among locations and pools as necessary to meet utilization and efficiency criteria. Sub-pools may be formed at a location for more efficient management or utilization purposes. The following statewide pools will be formed.

(A) Mission Critical Vehicles. The executive director or designee will assign vehicles to individual agency staff only after a written determination is made that the assignment [it] is critical to the needs and mission requirements of the agency. No personal use of these vehicles is authorized other than commuting or de minimis [minims] use (such as a stop for personal errand on the way between a business delivery and the employee's home) while commuting. TYC will report to the OVFM the information required by the *State Vehicle Fleet Management Plan* on each vehicle [by February 28, 2004 and thereafter] as individual assignments occur. TYC maintains specific agency policy and procedural requirements regarding individual state vehicle assignments in the agency's personnel manual.

(B) Administrative Support Vehicles.

(i) Pool vehicles will be made available for employee check-out as needed with local responsibility for prioritizing their use in the event of conflicting requirements. Administrative vehicle utilization can be augmented with leased or rental vehicles within mission and budget requirements.

(ii) When needs exceed availability, the vehicle control officer [chief local administrator (CLA)] will provide consultation regarding [ensure] the "best value" between using pool vehicles, rental vehicles, and/or personal reimbursement [and make assignments accordingly]. Employees cannot be required to use their personal vehicles for state business.

(C) Maintenance and Supply Vehicles. All agency locations are encouraged to minimize the requirements for registered motor vehicles and place more reliance on low speed utility vehicles [eonyances such as golf carts, "Gators" or "Mules" for these functions].

(D) Student Security and Client Support Vehicles. Vans are [The vans] used in conjunction with the campus security or youth transport functions. Statewide youth transportation vehicles will be part of this pool. Vehicles will be outfitted with security enclosures where needed.

(E) Special Requirements Vehicles. Heavy [The heavy] equipment or special purpose vehicles[, such as dump trucks, fire trucks, and staked flatbed trucks] are specifically authorized at some TYC locations because of unique circumstances or need.

(F) Law Enforcement Vehicles. Vehicles are authorized for use by the TYC Office of Inspector General (OIG) for law enforcement purposes. This pool of vehicles is not available for other purposes, such as student transport or use by non-OIG staff members.

(2) Individual Vehicle Assignments. The executive director or designee may assign state owned vehicles to an individual [or executive employee on a regular basis] only with written documentation that the assignment is critical to the needs and mission of the agency. The following information must be reported to the OVFM as individual assignments occur. [For specific policy and procedures regarding state vehicle assignment(s) refer to TYC's Personnel Policy and Procedure Manual (PRS) 43.15 (relating to State Vehicle Assignments).]

(A) Vehicle identification number, license plate number, year, make, and model;

(B) name and position of the individual to whom it is assigned, except law enforcement officers when this reporting could jeopardize the individual's security, as determined by the executive director or designee [unless a determination is made by the Executive Committee that there is a law enforcement or security determination and the vehicle has been issued alias license plates]; and

(C) reason the assignment is critical to the mission of the agency.

(3) TYC will establish and maintain the general minimum mileage criteria for its pooled vehicles based on the guidelines provided by OVFM. The fleet manager, in coordination with the director responsible for facility business management, will track utilization and initiate actions to rotate vehicles between locations or pools to meet minimum utilization criteria. The fleet manager will assist the VCOs as necessary in identifying unique requirements and justification for specific other minimum use criteria for OVFM consideration and waiver. The fleet manager will provide responses and justification to OVFM within 30 days of receipt of the semi-annual vehicle utilization reports.

(4) TYC will use one or more of the state contracted vendor cards for retail fuel dispensing services. Fuel cards will be issued for specific vehicles, not specific drivers. Unless specifically prohibited by manufacturer warranty or recommendations, all TYC vehicles operating on gasoline shall use regular unleaded gasoline. TYC employees will use self-service islands when refueling at retail fueling stations.

(5) TYC will establish vehicle replacement goals based on the purpose, age and mileage criteria published in the OVFM *State Vehicle Fleet Management Plan*.

(6) TYC will out-source maintenance and repair of fleet assets unless it is demonstrated to be more economical to perform those functions in-house. TYC will seek interagency agreements to obtain maintenance, repairs, and fuel where feasible.

(7) TYC may dispose of vehicles identified as excess by the OVFM through the Texas Facilities Commission (TFC) [FBPC] Surplus Property Division process or through other approved surplus property disposal processes. TYC must certify the successful disposal of vehicles identified as excess vehicles by OVFM within six [(6)] months from notification. Vehicles identified for disposal by OVFM [FBPC] are not eligible for replacement.

(8) TYC will capture and submit, through the fleet manager, fleet data to OVFM based on the criteria and timetable established in the *State Vehicle Fleet Management Plan*. TYC will maintain detailed supporting documentation for all reporting requirements. TYC will use the standardized vehicle-reporting log developed by OVFM unless a different form is specifically approved by OVFM.

(9) The fleet manager will collect, compile and report the data for the annual Fleet Operations Indirect Costs report to TPASS [FBPC] based on data provided by the VCOs.

[(g) Driving Requirements.]

[(1) Authorized Drivers. Individuals authorized to drive a state owned vehicle, privately owned vehicle, or a leased vehicle on TYC business shall do so in a responsible manner obeying all state laws and in compliance with the following rules. For specific procedures regarding authorized drivers refer to (PRS) 43.13 (relating to Driving Requirements).]

[(2) General Driver Rules.]

[(A) State vehicles shall be used only for official business. Official business may include travel directly to an employee's home the night before official travel begins or travel directly from an employee's home to his/her work site the morning after official travel ends when such is authorized by the employee's supervisor and will expedite the employee's travel or otherwise make the most efficient use of the employee's time. See (PRS) 43.13 (relating to Driving Requirements).]

[(B) Drivers and passengers are not permitted to smoke or use tobacco while operating or traveling in a state owned vehicle.]

[(C) Drivers and passengers are not permitted to consume or transport alcohol while operating or traveling in a state owned vehicle.]

[(3) Vehicle Accident. If an authorized driver is involved in an accident, he/she should notify his/her supervisor and the VCO immediately. If the accident occurs on a public thoroughfare, the proper authorities must be notified. See (PRS) 43.13 (relating to Driving Requirements).]

[(4) Use of Fuel Cards. TYC assigned fuel credit cards are to be used only for purchase of fuel, standard preventive maintenance items (oil and filter changes, etc.), car washes, and minor repairs. TYC issued fuel cards may be used only in state owned vehicles and vehicle(s) leased for state purposes. See (PRS) 43.13 (relating to Driving 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 April 26, 2010.

TRD-201002024

Cheryl K. Townsend

Executive Director

Texas Youth Commission

Earliest possible date of adoption: June 6, 2010

For further information, please call: (512) 424-6014



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 11. SURFACE MINING AND RECLAMATION DIVISION

SUBCHAPTER C. SUBSTANTIVE RULES--URANIUM EXPLORATION AND SURFACE MINING

DIVISION 1. INTRODUCTION

16 TAC §§11.71 - 11.74

The Railroad Commission of Texas withdraws the proposed amendments to §11.71 and §11.72 and new §11.73 and §11.74 which appeared in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7730).

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001940
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: April 20, 2010
For further information, please call: (512) 475-1295



DIVISION 2. DEFINITIONS

16 TAC §11.81, §11.82

The Railroad Commission of Texas withdraws the proposed amendments to §11.81 and §11.82 which appeared in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7730).

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001941
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: April 20, 2010
For further information, please call: (512) 475-1295



DIVISION 3. URANIUM SURFACE MINING PERMITS

16 TAC §§11.92 - 11.100

The Railroad Commission of Texas withdraws the proposed amendments to §§11.92 - 11.100 which appeared in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7730).

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001942
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: April 20, 2010
For further information, please call: (512) 475-1295



DIVISION 4. TERMINATION, SUSPENSION, REVISION, AND CORRECTION OF PERMITS

16 TAC §11.113, §11.114

The Railroad Commission of Texas withdraws the proposed amendments to §11.113 and §11.114 which appeared in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7730).

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001943
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: April 20, 2010
For further information, please call: (512) 475-1295



DIVISION 5. EXPLORATION ACTIVITIES

16 TAC §§11.131 - 11.139

The Railroad Commission of Texas withdraws the proposed repeal of §§11.131 - 11.139 which appeared in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7730).

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001939
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: April 20, 2010
For further information, please call: (512) 475-1295



**DIVISION 5. URANIUM EXPLORATION
PERMITS AND PERMIT FEES**

16 TAC §§11.131 - 11.142

The Railroad Commission of Texas withdraws the proposed new §§11.131 - 11.142 which appeared in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7730).

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001944

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Effective date: April 20, 2010

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



**DIVISION 6. URANIUM SURFACE MINING
RECLAMATION**

16 TAC §§11.151 - 11.153

The Railroad Commission of Texas withdraws the proposed amendments to §§11.151 - 11.153 which appeared in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7730).

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001945

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Effective date: April 20, 2010

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



DIVISION 8. MINE CLOSING AND RELEASE

16 TAC §§11.181, §11.182

The Railroad Commission of Texas withdraws the proposed amendments to §11.181 and §11.182 which appeared in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7730).

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001946

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Effective date: April 20, 2010

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



DIVISION 9. REPORTS AND REPORTING

16 TAC §11.194

The Railroad Commission of Texas withdraws the proposed amendment to §11.194 which appeared in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7730).

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001947

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Effective date: April 20, 2010

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



DIVISION 10. PERFORMANCE BONDS

16 TAC §§11.203, §11.206

The Railroad Commission of Texas withdraws the proposed amendments to §11.203 and §11.206 which appeared in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7730).

Filed with the Office of the Secretary of State on April 20, 2010.

TRD-201001948

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Effective date: April 20, 2010

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



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.61

The Texas Ethics Commission (commission) adopts an amendment to §20.61, relating to the description of the purpose of an expenditure under §254.031 of the Election Code, by adding subsection (d). The amendment is adopted with the change explained in the next paragraph to the proposed text as published in the February 26, 2010, issue of the *Texas Register* (35 TexReg 1535) and will be republished.

Section 20.61 clarifies the law that requires a person filing a campaign finance report to disclose the "purpose" of an expenditure made with political funds. Subsection (d) sets out examples of how certain expenditures would be reported under §20.61. A change was made in paragraph (2) of subsection (d) by replacing the word "rally" to "event."

The commission received the following written comment:

An individual submitted comments expressing concerns about the requirement to distinguish between in-district and out-of-district travel. The individual had other concerns, including the impact of the rule on local candidates and officeholders. The commission considers comments from all parties but was satisfied with the rule as proposed. No changes were made as a result of these comments.

The amendment to §20.61 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

§20.61. Purpose of Expenditure.

(a) For reporting required under §254.031 of the Election Code, the purpose of an expenditure means:

(1) A description of the category of goods, services, or other thing of value for which an expenditure is made. Examples of acceptable categories include:

- (A) advertising expense;
- (B) accounting/banking;
- (C) consulting expense;
- (D) contributions/donations made by candidate/officeholder/political committee;

- (E) event expense;
- (F) fees;
- (G) food/beverage expense;
- (H) gifts/awards/memorials expense;
- (I) legal services;
- (J) loan repayment/reimbursement;
- (K) office overhead/rental expense;
- (L) polling expense;
- (M) printing expense;
- (N) salaries/wages/contract labor;
- (O) solicitation/fundraising expense;
- (P) transportation equipment and related expense;
- (Q) travel in district;
- (R) travel out of district;
- (S) other political expenditures; and

(2) A brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure.

(b) The description of a political expenditure for travel outside of the state of Texas must provide the following:

- (1) The name of the person or persons traveling on whose behalf the expenditure was made;
- (2) The means of transportation;
- (3) The name of the departure city or the name of each departure location;
- (4) The name of the destination city or the name of each destination location;
- (5) The dates on which the travel occurred; and
- (6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

(c) This rule applies to expenditures made on or after July 1, 2010.

(d) Comments: The purpose of an expenditure must include both a description of the category of goods or services received in exchange for the expenditure and a brief statement or description of

the candidate, officeholder, or political committee activity that is conducted by making the expenditure. A description of an expenditure that merely states the item or service purchased is not adequate because doing so does not allow a person reading the report to know the allowable activity for which an expenditure was made. The following is a list of examples that describe how the purpose of an expenditure may be reported under §20.61. This list is for illustrative purposes only. It is intended to provide helpful information and to assist filers in reporting the purpose of an expenditure under this rule. However, it is not, and is not intended to be, an exhaustive or an exclusive list of how a filer may permissibly report the purpose of an expenditure under this rule. The rule does not require the candidate or officeholder to identify by name or affiliation an individual or group with whom the candidate or officeholder meets.

(1) Example: Candidate X is seeking the office of State Representative, District 2000. She purchases an airline ticket from ABC Airlines to attend a campaign rally within District 2000. The acceptable category for this expenditure is "travel in district." The candidate activity that is accomplished by making the expenditure is to attend a campaign rally. An acceptable brief statement is "airline ticket to attend campaign event."

(2) Example: Candidate X purchases an airline ticket to attend a campaign event outside of District 2000 but within Texas, the acceptable category is "travel out of district." The candidate activity that is accomplished by making the expenditure is to attend a campaign event. An acceptable brief statement is "airline ticket to attend campaign or officeholder event."

(3) Example: Candidate X purchases an airline ticket to attend an officeholder related seminar outside of Texas. The acceptable method for the purpose of this expenditure is by selecting the "travel out of district" category and completing the "Schedule T" (used to report travel outside of Texas).

(4) Example: Candidate X contracts with an individual to do various campaign related tasks such as work on a campaign phone bank, sign distribution, and staffing the office. The acceptable category is "salaries/wages/contract labor." The candidate activity that is accomplished by making the expenditure is to compensate an individual working on the campaign. An acceptable brief statement is "contract labor for campaign services."

(5) Example: Officeholder X is seeking re-election and makes an expenditure to purchase a vehicle to use for campaign purposes and permissible officeholder purposes. The acceptable category is "transportation equipment and related expenses" and an acceptable brief description is "purchase of campaign/officeholder vehicle."

(6) Example: Candidate X makes an expenditure to repair a flat tire on a campaign vehicle purchased with political funds. The acceptable category is "transportation equipment and related expenses" and an acceptable brief description is "campaign vehicle repairs."

(7) Example: Officeholder X purchases flowers for a constituent. The acceptable category is "gifts/awards/memorials expense" and an acceptable brief description is "flowers for constituent."

(8) Example: Political Committee XYZ makes a political contribution to Candidate X. The acceptable category is "contributions/donations made by candidate/officeholder/political committee" and an acceptable brief description is "campaign contribution."

(9) Example: Candidate X makes an expenditure for a filing fee to get his name on the ballot. The acceptable category is "fees" and an acceptable brief description is "candidate filing fee."

(10) Example: Officeholder X makes an expenditure to attend a seminar related to performing a duty or engaging in an activity in connection with the office. The acceptable category is "fees" and an acceptable brief description is "attend officeholder seminar."

(11) Example: Candidate X makes an expenditure for political advertising to be broadcast by radio. The acceptable category is "advertising expense" and an acceptable brief description is "political advertising." Similarly, Candidate X makes an expenditure for political advertising to appear in a newspaper. The acceptable category is "advertising expense" and an acceptable brief description is "political advertising."

(12) Example: Officeholder X makes expenditures for printing and postage to mail a letter to all of her constituents, thanking them for their participation during the legislative session. Acceptable categories are "advertising expense" OR "printing expense" and an acceptable brief description is "letter to constituents."

(13) Example: Officeholder X makes an expenditure to pay the campaign office electric bill. The acceptable category is "office overhead/rental expense" and an acceptable brief description is "campaign office electric bill."

(14) Example: Officeholder X makes an expenditure to purchase paper, postage, and other supplies for the campaign office. The acceptable category is "office overhead/rental expense" and an acceptable brief description is "campaign office supplies."

(15) Example: Officeholder X makes an expenditure to pay the campaign office monthly rent. The acceptable category is "office overhead/rental expense" and an acceptable brief description is "campaign office rent."

(16) Example: Candidate X hires a consultant for fundraising services. The acceptable category is "consulting expense" and an acceptable brief description is "campaign services."

(17) Example: Candidate/Officeholder X pays his attorney for legal fees related to either campaign matters or officeholder matters. The acceptable category is "legal services" and an acceptable brief description is "legal fees for campaign" or "for officeholder matters."

(18) Example: Candidate/Officeholder X makes food and beverage expenditures for a meeting with her constituents. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting with constituents."

(19) Example: Candidate X makes food and beverage expenditures for a meeting to discuss candidate issues. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting to discuss campaign issues."

(20) Example: Officeholder X makes food and beverage expenditures for a meeting to discuss officeholder issues. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting to discuss officeholder issues."

(21) Example: Candidate/Officeholder X makes food and beverage expenditures for a meeting to discuss campaign and officeholder issues. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting to discuss campaign/officeholder issues."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2010.
TRD-201001990

Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: May 12, 2010
Proposal publication date: February 26, 2010
For further information, please call: (512) 463-5800



PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 116. PROPERTY MANAGEMENT DIVISION

Introduction and Background

The Texas Facilities Commission (the "Commission") announces its adoption of rule amendments to 1 TAC §§116.1 - 116.8 concerning Commission management of State-owned property under Tex. Gov't Code, Chapter 2165, including definitions; delineation of occupying agency responsibilities; facility maintenance, repairs, and modifications; procedures governing maintenance service and minor construction contracts; the Commission's tenant manual; temporary use of property on the Commission's inventory; applicability of national fire codes; and parking. The Commission further announces its adoption of proposed rule repeal of 1 TAC §§116.5, 116.9 - 116.11, 116.13, and 116.20 - 116.28 relating to building operations, air quality, conference rooms, signage, security, and the Mandatory Paper Recycling Program, respectively as the text provides the public no additional guidance or direction than that reflected in the governing statutes and Commission's Tenant Manual. The Commission also readopts with no amendments §116.12 and §116.14 relating to delegated authority for facilities management and mandatory energy-savings devices for vending machines.

These rule changes were proposed pursuant to the Commission's rulemaking authority found in Tex. Gov't Code, §§2165.0012, 2165.058, 2175.061(b), and 2175.902 (Vernon 2008). The proposed rule amendments to §§116.1 - 116.8 and repeal of §§116.5, 116.9 - 116.11, 116.13, and 116.20 - 116.28 are adopted without changes to the proposed text as published in the February 5, 2010, issue of the *Texas Register* (35 TexReg 727).

Justification for the Rule

The rule amendments to 1 TAC §§116.1 - 116.8 are adopted to reflect the agency's name change, to ensure consistency and compliance with governing statutes, and to correct typographical errors.

Adoption of the proposed repeal of 1 TAC §§116.5, 116.9 - 116.11, and 116.13 is proper as the rules provide no additional guidance or direction to the governing statutes and the Commission's Tenant Manual. In addition, the repeal of 1 TAC §§116.20 - 116.28 is adopted for the purpose of establishing a new stand-alone chapter relating to the Commission's Mandatory Paper Recycling Program (Program) comprised of former Subchapter B of Chapter 116 and designated as new Chapter 117.

Summary of Comments

The comment period ended March 8, 2010. No comments were received.

SUBCHAPTER A. STATE OWNED PROPERTY

1 TAC §§116.1 - 116.8

Statutory Authority.

The rule amendments are adopted under Tex. Gov't Code, §2165.0012 and §2165.058 (Vernon 2008).

Cross Reference to Statute.

The adopted rule amendments affect Ch. 2165 of the Tex. Gov't Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2010.

TRD-201001984

Kay Molina

General Counsel

Texas Facilities Commission

Effective date: May 12, 2010

Proposal publication date: February 5, 2010

For further information, please call: (512) 463-4257



1 TAC §§116.5, 116.9 - 116.11, 116.13

Statutory Authority.

The rule repeal is adopted under Tex. Gov't Code, §2165.0012 and §2165.058 (Vernon 2008).

Cross Reference to Statute.

The adopted rule repeal affects Ch. 2165 of the Tex. Gov't Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2010.

TRD-201001985

Kay Molina

General Counsel

Texas Facilities Commission

Effective date: May 12, 2010

Proposal publication date: February 5, 2010

For further information, please call: (512) 463-4257



SUBCHAPTER B. MANDATORY PAPER RECYCLING PROGRAM

1 TAC §§116.20 - 116.28

Statutory Authority.

The repeal of Subchapter B is adopted under Texas Government Code §2175.061(b) and §2175.902 (Vernon 2008).

Cross Reference to Statute.

The statutory provisions affected by the adopted repeal are those set forth in §2175.061(b) and §2175.902 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2010.

TRD-201001986

Kay Molina

General Counsel

Texas Facilities Commission

Effective date: May 12, 2010

Proposal publication date: February 5, 2010

For further information, please call: (512) 463-4257



CHAPTER 117. MANDATORY PAPER RECYCLING PROGRAM

1 TAC §§117.1 - 117.7

Introduction and Background

The Texas Facilities Commission (the "Commission") announces its adoption of proposed new rules designated as 1 TAC §§117.1 - 117.7 concerning the Mandatory Paper Recycling Program (Program). Within new Chapter 117, the Commission proposed new rules designated as Texas Administrative Code, Title 1, Part 5, §§117.1, 117.3, and 117.7 (former §§116.21, 116.23, and 116.27) relating to definitions, designation of agency recycling coordinators, and guidelines and procedures for collecting and recycling of paper through the single-stream recycling initiative; the proposed new rules include revisions to the former language to reflect the agency's name change, to delete definitions no longer in use in this subchapter and language that provides no additional guidance to the governing statutes, and to correct typographical errors. The Commission also proposed new rules designated as Texas Administrative Code, Title 1, Part 5, §§117.2, 117.4, 117.5 and 117.6 (former §§116.22, 116.24, 116.25 and 116.26) relating to Program goals, Program performance measures, paper recycling training, and delegation of responsibility; these proposed rules do not include any revisions to the former language. Through its notice, the Commission intentionally did not propose re-adoption of Texas Administrative Code, Title 1, Part 5, former §116.20, which identifies the statutory authority establishing the Program and directing Program sale proceeds, and former §116.28 relating to interagency agreements for paper recycling services as both rules are unnecessary and provide the public with no additional guidance or direction than that reflected in the governing statutes.

These rule changes were proposed pursuant to the Commission's rulemaking authority found in Texas Government Code, §2175.061(b) and §2175.902 (Vernon 2008). The proposed new rules in §§117.1 - 117.7 are adopted without changes to the proposed text as published in the February 5, 2010, issue of the *Texas Register* (35 TexReg 727).

Justification for the Rule

The new rules designated as 1 TAC §§117.1 - 117.7 are adopted to establish a new stand-alone chapter relating solely to the Program and are comprised of a portion of the provisions from former Subchapter B of Title 1, Chapter 116. The proposed rules include revisions to the former language to reflect the agency's name change, to delete definitions no longer in use in this sub-

chapter and language that provides no additional guidance to the governing statutes, and to correct typographical errors.

Summary of Comments

The comment period ended March 8, 2010. No comments were received.

Statutory Authority

The new rules are adopted under Texas Government Code §2175.061(b) and §2175.902 (Vernon 2008).

Cross Reference to Statute

The adopted new rules affect Chapter 2175 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2010.

TRD-201001988

Kay Molina

General Counsel

Texas Facilities Commission

Effective date: May 12, 2010

Proposal publication date: February 5, 2010

For further information, please call: (512) 463-4257



TITLE 7. BANKING AND SECURITIES

PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN ORIGINATOR REGULATIONS

The Finance Commission of Texas (the "Commission"), on behalf of the Texas Department of Savings and Mortgage Lending (the "Department"), adopts amendments to the following sections: §80.1, Scope; §80.2, Definitions; §80.8, Limitations on Charging of Fees; §80.9, Required Disclosures; §80.10, Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings; §80.11, Advertising; §80.12, License Record Changes; §80.13, Books and Records; §80.14, Education Program; §80.15, Complaints, Administrative Penalties, and Disciplinary and/or Enforcement Actions; §80.20, Inspections; §80.21, Investigations; §80.22, Loan Status Forms; §80.23, Annual Reports and Call Reports; and adopts new Subchapter L, Licensing; §80.301, Scope; §80.302, Definitions; §80.303, Licensing - General; §80.304, Qualifications for Obtaining Licenses; §80.305, Renewals; §80.306, Sponsorship and Termination Thereof; and §80.307, Background Checks. Sections 80.20, 80.301 and 80.304 are adopted with changes to the proposed text as published in the March 5, 2010, issue of the *Texas Register* (35 TexReg 1846) and will be republished. Sections 80.1, 80.2, 80.8 - 80.15, 80.21 - 80.23, 80.302, 80.303, and 80.305 - 80.307 are adopted without changes and will not be republished.

Consultation with Stakeholders

The Act establishes a Mortgage Industry Advisory Committee to advise the Commissioner and the Finance Commission on the promulgation of forms and regulations, and the implementation of the Act. The advisory committee members were provided copies of the proposed rule changes on January 20, 2010, and comments from all members were received at the Mortgage Industry Advisory Committee. No member objected to the publication of the rule changes for comments. The members of the Mortgage Industry Advisory Committee were informed that adoption of these amendments would be brought to the Finance Commission at its April 16, 2010 meeting. At the Mortgage Industry Advisory Committee's meeting held on March 17, 2010, the committee voted unanimously to support the amendments.

Additionally, the Conference of State Bank Supervisors has given its support to these amendments.

On March 9, 2010, the Department via e-mail blast sent the proposed amendments to 9,906 licensees/registrants and 1,068 general listserv enrollees.

Description of Amendments

Amended title of 7 TAC Chapter 80, concerning Texas Mortgage Broker Regulations, replaces the title "Texas Mortgage Broker Regulations" with "Texas Residential Mortgage Loan Originator Regulations" and is consistent with changes to terms throughout the rules.

Amended §80.1, concerning Scope, indicates that the Subchapter is to be rescinded on January 1, 2011 and is to be replaced by Subchapter L of 7 TAC Chapter 80. Additionally, the term "Mortgage Loan" has been changed to "Residential Mortgage Loan" throughout.

Amended §80.2, concerning Definitions, replaces the definition for "Mortgage Loan" with the definition of "Residential Mortgage Loan". The definition expands on the definition found in Finance Code Chapter 180 by clarifying that the term includes new loans, renewals, extensions, modifications, and rearrangements. Definitions for the terms "Dwelling" and "Residential Real Estate" have also been included.

Amended §80.8, concerning Limitations on Charging of Fees, replaces the terms "Mortgage Broker" and "Loan Officer" with the term "Residential Mortgage Loan Originator" and replaces the term "Mortgage Loan" with "Residential Mortgage Loan" throughout.

Amended §80.9, concerning Required Disclosures, replaces the terms "Mortgage Broker" and "Loan Officer" with the term "Residential Mortgage Loan Originator" and replaces the term "Mortgage Loan" with "Residential Mortgage Loan" throughout. The proposal also amends the Residential Mortgage Loan Originator Disclosure form by eliminating the requirement of court order prior to payment of a claim from the Recovery Fund and replacing the requirement with a written application for reimbursement from the Recovery Fund that must be investigated by the Department.

Amended §80.10, concerning Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings, replaces the terms "Mortgage Broker" and "Loan Officer" with the term "Residential Mortgage Loan Originator" and replaces the term "Mortgage Loan" with "Residential Mortgage Loan" throughout and eliminates the language that a sponsoring broker engages in false, misleading or deceptive practices or improper dealings when affiliating with a second mortgage broker who engages in false, misleading, or deceptive practices.

Amended §80.11, concerning Advertising, replaces the terms "Mortgage Broker" and "Loan Officer" with the term "Residential Mortgage Loan Originator" and replaces the term "Mortgage Loan" with "Residential Mortgage Loan" throughout.

Amended §80.12, concerning License Record Changes, clarifies that changes in address, personal name, or company or organization name shall be filed through the Nationwide Mortgage Licensing System and Registry together with the payment of any applicable fees.

Amended §80.13, concerning Books and Records, replaces the terms "Mortgage Broker" and "Loan Officer" with the term "Residential Mortgage Loan Originator" and replaces the term "Mortgage Loan" with "Residential Mortgage Loan" throughout. Additionally, the amendment eliminates language regarding the transfer of records upon termination of a mortgage broker's sponsorship of a loan officer.

Amended §80.14, concerning Education Program, indicates that subsections (a) - (q) are rescinded effective January 1, 2011. Subsection (r) was added and indicates that effective April 2, 2010, pre-licensing and continuing education courses must be reviewed and approved by the Nationwide Mortgage Licensing System and Registry.

Amended §80.15, concerning Complaints, Administrative Penalties, and Disciplinary and/or Enforcement Actions, replaces the terms "Mortgage Broker" and "Loan Officer" with the term "Residential Mortgage Loan Originator"; amends language regarding investigations subsequent to payments from the Recovery Fund; and amends the maximum administrative penalty from \$2,500 per violation per day to \$25,000 per violation. Additionally, the amendment adds that the Commissioner shall consider economic harm to property caused by a violation and efforts by the licensee to correct the violation when determining the amount of any administrative penalty.

Amended §80.20, concerning Inspections, replaces the terms "Mortgage Broker" and "Loan Officer" with the term "Residential Mortgage Loan Originator" and replaces the term "Mortgage Loan" with "Residential Mortgage Loan" throughout.

Amended §80.21, concerning Investigations, clarifies that the person who is the designated representative of an entity is responsible for all acts and conduct performed by or through the entity including acts and conduct by residential mortgage loan originators sponsored by the entity.

Amended §80.22, concerning Loan Status Forms, replaces the terms "Mortgage Broker" and "Loan Officer" with the term "Residential Mortgage Loan Originator" and clarifies that a licensee shall use the promulgated form when providing a loan applicant with confirmation that an application for a mortgage loan has been approved.

Amended §80.23, concerning Annual Reports and Call Reports, adds language requiring a company or organization licensee to submit condition reports as required by the Nationwide Mortgage Licensing System and Registry.

New Subchapter L addresses the Department's licensing program effective April 2, 2010.

New §80.301, concerning Scope, defines the terms residential mortgage loan originator, mortgage company, financial services company, credit union subsidiary organization, auxiliary mortgage loan activity company, and independent contractor loan processor/underwriter company. Additionally, the new section

describes when a person must be licensed under the Act and describes persons who are exempt from licensure under the Act. Subsequent to the proposal, the following non-material revision was made to §80.301: "except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, §180.251(c)". This non-material revision provides an exception for individuals subject to the authority of a regulatory official under Finance Code, §180.251(c). The SAFE Act provides that the Office of Consumer Credit Commissioner (OCCC) is a regulatory official with respect to individuals licensed under Chapters 342, 347, 348, and 351. This exception clarifies that the OCCC administers and enforces the SAFE Act with respect to these licensees. These changes preserve the regulation of licensed constituencies as it existed prior to the SAFE Act.

New §80.302, concerning Definitions, adds definitions for numerous terms found in 7 TAC Chapter 80.

New §80.303, concerning Licensing - General, adds language that applications for individual, company, or organization licensure must be submitted through the Nationwide Mortgage Licensing System and Registry; applications deemed incomplete may be withdrawn after 30 days from the Department's request for additional information; and all licenses issued shall be valid for a term of not more than one year from the date of issuance and shall expire on December 31st of the year issued.

New §80.304, concerning Qualifications for Obtaining Licenses, adds language describing the minimum qualifications for licensure under the various license types offered by the Department.

New §80.305, concerning Renewals, adds language describing the conditions in which an application for license renewal may be approved or denied. Additionally, new §80.305 states that a licensed individual on active military duty serving outside of Texas shall be exempt from any late filing penalty fee for renewing after the expiration date of the license and is entitled to additional time to complete any education requirements or other requirements related to the renewal of the license, pursuant to Occupations Code §55.001.

New §80.306, concerning Sponsorship and Termination Thereof, adds language that companies or organizations affiliating with residential mortgage loan originators are required to sponsor their license; an applicant for a residential mortgage loan originator license without sponsorship may be issued an inactive license; and sponsorship may be removed by either the sponsoring company or the residential mortgage loan originator.

New §80.307, concerning Background Checks, adds language that each applicant for a residential mortgage loan originator license shall provide authorization and fingerprints necessary to conduct a criminal background history check through the Federal Bureau of Investigation; the Commissioner may conduct background history checks through the Department of Public Safety; each applicant shall provide authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain a credit report from a consumer credit reporting agency; and each applicant shall provide information related to any administrative, civil, or criminal findings by a governmental jurisdiction. The new section indicates that, except under certain circumstances, information obtained under the subsection shall be kept confidential. Additionally, an individual considering applying for a license may request a criminal history evaluation letter regarding the person's eligibility for a license as defined in Chapter 53, Subchapter D, Occupations Code.

Public Comment

The Department received nine comments. Two contained comments on more than one issue. A comment supporting the changes was received from Mr. Robert Powell, Mortgage Broker. A comment supporting the changes from Ms. Ceci Wilson. Comments requesting changes were received from Mr. Larry Brumfield; Kendor Financial, Ltd.; Ms. Ruby Walker; City of Bryan Community Development Services Department (two comments); City of Harlingen Community Development; and the City of Denton Community Development.

A commenter stated that he thinks it is fine that "all the changes will be made to the regulations."

Two commenters made general comments about the changes, both on the federal and state level, in the mortgage licensing system. The Commission acknowledges those comments; however, Texas enacted the Texas SAFE Act due to a federal mandate to do so. HUD has found the Department to be in substantial compliance with the mandate. The adopted amendments and additions to the rules enable the Department to enforce the Texas SAFE Act.

Three commenters stated new §80.307 will affect their credit rating because it requires each applicant to provide authorization for the Nationwide Mortgage Licensing System and Registry and the Department to obtain a credit report from a consumer credit reporting agency. The Commission disagrees with this comment. The credit reports pulled by the Nationwide Mortgage Licensing System and Registry and the Department will be coded in such a manner as to avoid impacting the applicant's credit score. In the industry this manner of pulling credit reports is referred to as a "soft pull". This requirement is also in the federal SAFE Act.

One commenter stated he disagrees with realtors not having to be licensed and with the exemptions found in the Texas SAFE Act, because these people may be giving advice to customers. The Commission disagrees with this comment. All license holders must meet the same licensing requirements, including education and testing requirements. If a licensed or registered real estate broker is compensated by a lender, mortgage broker, or other residential mortgage loan originator or the agent of a lender, mortgage broker or other residential mortgage loan originator, then the real estate broker would have to have a license under the Texas SAFE Act, and, would have to meet all licensing requirements. Further, this is a comment concerning the Texas SAFE Act not the amended rules. Any changes to the Texas SAFE Act would have to be made by the Texas Legislature and remain in compliance with the federal SAFE Act.

Four commenters suggested that state and local governmental employees managing homebuyer and home improvement programs using Federal funds be exempt from licensing requirements because they are working with federal programs to provide assistance to low and moderate income people and a requiring them to be licensed will hinder the future of the programs. One of the commenters stated that they do not negotiate the terms of residential mortgage loans for compensation or gain, as their salaries and wages are paid from annual HUD grants. Three of the commenters stated that the cost of training and compliance would negatively impact the governmental agencies. The Commission disagrees with these comments. The regulatory trade groups, CSBS and AARMR, sent a comment letter to HUD seeking a similar interpretation to that which the commenters seek, or in the alternative, seeking delegated authority

for the states. However, as it stands, HUD is the sole interpreter and HUD has stated that governmental entities, including its own employees and programs, must be licensed. Additionally, HUD, has taken a broad view of the definition of "compensation or gain" and stated it includes "any circumstances in which an individual receives or expects to receive anything of value in connection with offering or negotiating terms of a residential mortgage loan." These terms are not limited to "payments that are contingent upon closing of a loan. Further, this is a comment concerning the Texas SAFE Act not the amended rules. Any changes to the Texas SAFE Act would have to be made by the Texas Legislature and remain in compliance with the federal SAFE Act.

SUBCHAPTER A. LICENSING

7 TAC §80.1, §80.2

The amendments are adopted under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code, §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2010.

TRD-201001925

Caroline Jones

General Counsel

Texas Department of Savings and Mortgage Lending

Effective date: May 9, 2010

Proposal publication date: March 5, 2010

For further information, please call: (512) 475-1352



SUBCHAPTER B. PROFESSIONAL CONDUCT

7 TAC §80.8 - 80.11

The amendments are adopted under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code, §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2010.

TRD-201001926

Caroline Jones

General Counsel

Texas Department of Savings and Mortgage Lending

Effective date: May 9, 2010

Proposal publication date: March 5, 2010

For further information, please call: (512) 475-1352



SUBCHAPTER C. ADMINISTRATION AND RECORDS

7 TAC §§80.12 - 80.14

The amendments are adopted under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code, §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2010.

TRD-201001927

Caroline Jones

General Counsel

Texas Department of Savings and Mortgage Lending

Effective date: May 9, 2010

Proposal publication date: March 5, 2010

For further information, please call: (512) 475-1352



SUBCHAPTER D. COMPLAINTS AND INVESTIGATIONS

7 TAC §80.15

The amendment is adopted under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code, §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2010.

TRD-201001928

Caroline Jones

General Counsel

Texas Department of Savings and Mortgage Lending

Effective date: May 9, 2010

Proposal publication date: March 5, 2010

For further information, please call: (512) 475-1352



SUBCHAPTER I. INSPECTIONS AND INVESTIGATIONS

7 TAC §80.20, §80.21

The amendments are adopted under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code, §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

§80.20. *Inspections.*

(a) The Commissioner, operating through the Department staff and such others as the Commissioner may from time to time designate, will conduct periodic inspections of Residential Mortgage Loan Originators as the Commissioner deems necessary.

(b) Except when the Department determines that giving advance notice would impair the inspection, the Department will give licensees advance notice of each inspection. Such notice will be sent to the licensee's address of record or e-mail address on file with the Department and will specify the date on which the Department's inspectors are scheduled to arrive at the licensee's office. Failure of the licensee to actually receive the notice will not be grounds for delay or postponement of the inspection. The notice will include a list of the documents and records the licensee should have available for the inspector to review.

(c) Inspections will be conducted to determine compliance with the Act and will specifically address whether:

- (1) All persons conducting residential mortgage loan origination activities are properly licensed;
- (2) All locations at which such activities are conducted are properly licensed;
- (3) All required books and records are being maintained in accordance with §80.13 of this chapter (relating to Books and Records);
- (4) Legal and regulatory requirements applicable to licensees are being properly followed; and
- (5) Such other matters as the Commissioner may deem necessary or advisable to carry out the purposes of the Act.

(d) The Commissioner may require reimbursement in an amount not to exceed \$325 for each examiner a day for on-site examination or investigation of a Residential Mortgage Loan Originator if records are located out of state or if the review is considered necessary beyond the routine examination process.

(e) The inspector will review a sample of Residential Mortgage Loan Files identified by the inspector on the date of inspection and randomly selected from the licensee's Mortgage Transaction Log. The inspector may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(f) The inspector may require a licensee, at his or her own cost, to make copies of loan files or such other books and records as the inspector deems appropriate for the preparation of or inclusion in the inspection report.

(g) The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an inspection conducted under this section, shall be maintained as confidential except as required or expressly permitted by law.

(h) Failure of a licensee to cooperate with the inspection or failure to grant the inspector access to books, records, documents, operations, and facilities of the licensee will subject the licensee to enforcement actions by the Commissioner, including, but not limited to, administrative penalties.

(i) Whenever the Department must travel out-of-state to conduct an inspection of a licensee because that licensee maintains required records at a location outside of the state, the licensee will be required to reimburse the Department for the actual cost the Department incurs in connection with such out-of-state travel including, but not limited to, transportation, lodging, meals, employee travel time, telephone and FAX communication, courier service and any other reasonably related costs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2010.

TRD-201001929
Caroline Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: May 9, 2010
Proposal publication date: March 5, 2010
For further information, please call: (512) 475-1352



SUBCHAPTER J. FORMS

7 TAC §80.22

The amendment is adopted under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code, §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2010.

TRD-201001931
Caroline Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: May 9, 2010
Proposal publication date: March 5, 2010
For further information, please call: (512) 475-1352



SUBCHAPTER K. ANNUAL REPORTS AND CALL REPORTS

7 TAC §80.23

The amendment is adopted under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code, §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2010.

TRD-201001930

Caroline Jones

General Counsel

Texas Department of Savings and Mortgage Lending

Effective date: May 9, 2010

Proposal publication date: March 5, 2010

For further information, please call: (512) 475-1352



SUBCHAPTER L. LICENSING

7 TAC §§80.301 - 80.307

The new sections are adopted under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code, §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

§80.301. *Scope.*

This subchapter governs the licensing, registration and conduct of Residential Mortgage Loan Originators, Mortgage Companies, Financial Services Companies, Credit Union Subsidiary Organizations, Auxiliary Mortgage Loan Activity Companies, and Independent Contractor Loan Processors and Underwriters under the Act and Finance Code Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 ("SAFE Act"), except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code §180.251(c). The terms "licensed" and "registered" may be used interchangeable.

(1) As used herein, the term "Residential Mortgage Loan Originator" means an individual who for compensation or gain, or in expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates the terms of a residential mortgage loan application.

(2) The term Residential Mortgage Loan Originator does not include:

(A) An individual who performs solely administrative or clerical tasks for a licensed Residential Mortgage Loan Originator.

(B) An individual who performs only real estate brokerage activities and is a state licensed or registered real estate broker or salesperson, unless the individual is compensated by:

(i) a lender, mortgage broker, or other residential mortgage loan originator; or

(ii) an agent of a lender, mortgage broker, or other residential mortgage loan originator;

(C) An individual licensed as a manufactured home salesperson or broker under Chapter 1201, Occupations Code, unless the individual is directly compensated for arranging financing by:

(i) a lender, mortgage broker, or other residential mortgage loan originator; or

(ii) an agent of a lender, mortgage broker, or other residential mortgage loan originator;

(D) An individual who receives the same benefits from a financed transaction as the individual would have received if the transaction were a cash transaction; or

(E) An individual who is involved solely in providing extensions of credit relating to timeshare plans, as defined by 11 U.S.C. Section 101(53D).

(3) As used herein, the term "Mortgage Company" means any corporation, company, partnership, or sole proprietorship that engages in the business of residential mortgage loan origination.

(4) As used herein, the term "Financial Services Company" has the meaning assigned by Section 156.214 of the Act.

(5) As used herein, the term "Credit Union Subsidiary Organization" means an agency, association, or company wholly or partly owned by a credit union that is designed primarily to serve or otherwise assist credit union operations.

(6) As used herein, the term "Auxiliary Mortgage Loan Activity Company" means any political subdivision of Texas or any organization that qualifies for an exemption from Texas franchise and sales taxes by virtue of its status under §501(c)(3) of the Internal Revenue code, as amended, that are involved in affordable home ownership programs.

(7) As used herein, the term "Independent Contractor Loan Processor/Underwriter Company" means any corporation, company, partnership, or sole proprietorship that receives compensation as or for an individual performing clerical or support duties as an independent contractor loan processor or underwriter at the direction of a licensed residential mortgage loan originator.

(8) A person is required to be licensed under the Act if:

(A) The person engages in the business of residential mortgage loan origination on real property located in the state of Texas;

(B) An individual has a primary residence in the State of Texas and engages in the business of residential mortgage loan origination;

(C) An individual represents or holds himself out to the public as a "loan officer," "mortgage consultant," "mortgage broker," "loan modification/refinance consultant," or "residential mortgage loan originator," or otherwise represents that the individual can or will perform the activities of a residential mortgage loan originator;

(D) Provides disclosures to a prospective borrower or discusses or explains such disclosures. Disclosures include but are not limited to the Residential Mortgage Loan Originator disclosure form; truth in lending disclosures, the good faith estimate of settlement costs, affiliated business arrangements; and disclosures relating to the dual role as a Residential Mortgage Loan Originator and real estate broker or sales agent. An individual who prepares a required disclosure under the direction and supervision of a licensed Residential Mortgage Loan Originator, but who does not discuss the disclosure with a prospective borrower shall not be deemed to have provided a disclosure for purposes of this subparagraph;

(E) Determines the lender(s) or investor(s) to whom the loan will be submitted;

(F) Issues or signs a prequalification letter or preapproval letter; or

(G) The person is a Loan Processor or Underwriter who is an independent contractor.

(9) The following persons are exempt from the Act and this chapter:

(A) a registered mortgage loan originator when acting for:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and is regulated by a federal agency;

(iii) an institution regulated by the Farm Credit Administration;

(B) a residential mortgage loan originator when acting for a Mortgage Banker licensed under Finance Code Chapter 157;

(C) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(D) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney takes a residential mortgage loan application and offers or negotiates the terms of a residential mortgage loan;

(E) an individual who is an exclusive agent of a registered financial services company and is enrolled as a registered mortgage loan originator with the Nationwide Mortgage Licensing System and Registry;

(F) an individual who offers or negotiates terms of a residential mortgage loan secured by the individual's primary residence; or

(G) an individual who offers or negotiates terms of a commercial mortgage loan.

§80.304. Qualifications for Obtaining Licenses.

(a) Mortgage Company Licenses. In order to be issued a Mortgage Company License, the applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate control persons for the company through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed by the Department as a Residential Mortgage Loan Originator as its qualifying individual;

(4) submit a completed branch application through the Nationwide Mortgage Licensing System and Registry for each branch office that conducts business on real property located in Texas;

(5) not be in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner;

(6) have the company name or assumed name properly filed with either the Texas Secretary of State or with the appropriate County Clerk's office; and

(7) maintain a physical office in the state of Texas.

(b) Mortgage Company Residential Mortgage Loan Originator Licenses. In order to be issued a license as a Mortgage Company Residential Mortgage Loan Originator, an individual must submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the payment of applicable fees and must establish to the satisfaction of the Commissioner that:

(1) the applicant has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) the applicant is not in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner;

(3) the applicant has not been convicted of, pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, the applicant has not been convicted of, pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) the applicant demonstrates the financial responsibility, character, and general fitness required to operate honestly, fairly, and efficiently as a Residential Mortgage Loan Originator under the Act;

(6) the applicant has successfully completed at least 20 hours of NMLS-approved pre-licensing education;

(7) the applicant has passed both the state component and the national component on a written test that meets the requirements of Finance Code §180.057; and

(8) the applicant has paid a Recovery Fund fee as described by Finance Code §156.502(a).

(c) Credit Union Subsidiary Organization Licenses. In order to be issued a Credit Union Subsidiary Organization License under the Act, an applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate control persons for the company through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed by the Department as a Residential Mortgage Loan Originator as its qualifying individual;

(4) submit a completed branch application through the Nationwide Mortgage Licensing System and Registry for each branch office that conducts business on real property located in Texas; and

(5) not be in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner.

(d) Credit Union Subsidiary Organization Residential Mortgage Loan Originator Licenses. In order to be issued a license as a Credit Union Subsidiary Organization Residential Mortgage Loan Originator, an individual must submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the payment of applicable fees and must establish to the satisfaction of the Commissioner that:

(1) the applicant has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) the applicant is not in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner;

(3) the applicant has not been convicted of, pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, the applicant has not been convicted of, pled guilty or no contest to, a felony

in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) the applicant demonstrates the financial responsibility, character, and general fitness required to operate honestly, fairly, and efficiently as a Residential Mortgage Loan Originator under the Act;

(6) the applicant has successfully completed at least 20 hours of NMLS-approved pre-licensing education;

(7) the applicant has passed both the state component and the national component on a written test that meets the requirements of Finance Code §180.057; and

(8) the applicant has paid a Recovery Fund fee not to exceed \$20 and described by Finance Code §156.502(a).

(e) Auxiliary Mortgage Loan Activity Company License. In order to be issued an Auxiliary Mortgage Loan Activity Company License under the Act, the applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate control persons for the company through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed by the Department as a Residential Mortgage Loan Originator as its qualifying individual;

(4) submit a completed branch application through the Nationwide Mortgage Licensing System and Registry for each branch office that conducts business on real property located in Texas; and

(5) not be in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner.

(f) Auxiliary Mortgage Loan Activity Residential Mortgage Loan Originator License. In order to be issued a license as an Auxiliary Mortgage Loan Activity Residential Mortgage Loan Originator, an individual must submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the payment of applicable fees and must establish to the satisfaction of the Commissioner that:

(1) the applicant has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) the applicant is not in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner;

(3) the applicant has not been convicted of, pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, the applicant has not been convicted of, pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) the applicant demonstrates the financial responsibility, character, and general fitness required to operate honestly, fairly, and efficiently as a Residential Mortgage Loan Originator under the Act;

(6) the applicant has successfully completed at least 20 hours of NMLS-approved pre-licensing education;

(7) the applicant has passed both the state component and the national component on a written test that meets the requirements of Finance Code §180.057; and

(8) the applicant has paid a Recovery Fund fee not to exceed \$20 and described by Finance Code §156.502(a).

(g) Independent Contractor Loan Processor/Underwriter Company License. In order to be issued a License under the Act, the applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate control persons for the company through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed by the Department as a Residential Mortgage Loan Originator as its qualifying individual;

(4) submit a completed branch application through the Nationwide Mortgage Licensing System and Registry for each branch office that conducts business on real property located in Texas; and

(5) not be in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner.

(h) Independent Contractor Loan Processor/Underwriter License. In order to be issued a license as an Independent Contractor Loan Processor/Underwriter Residential Mortgage Loan Originator, an individual must submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the payment of applicable fees and must establish to the satisfaction of the Commissioner that:

(1) the applicant has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) the applicant is not in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner;

(3) the applicant has not been convicted of, pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, the applicant has not been convicted of, pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) the applicant demonstrates the financial responsibility, character, and general fitness required to operate honestly, fairly, and efficiently as a Residential Mortgage Loan Originator under the Act;

(6) the applicant has successfully completed at least 20 hours of NMLS-approved pre-licensing education;

(7) the applicant has passed both the state component and the national component on a written test that meets the requirements of Finance Code §180.057; and

(8) the applicant has paid a Recovery Fund fee not to exceed \$20 and described by Finance Code §156.502(a).

(i) Registered Financial Services Companies. In order to be issued a Financial Services Company registration under the Act, the applicant must:

(1) obtain pre-approval from the Commissioner that the company meets the requirements of a Financial Services Company;

(2) submit a completed application through the Nationwide Mortgage Licensing System and Registry together with applicable fees described by Finance Code §156.214(b)(4);

(3) provide evidence to the Commissioner of a surety bond equal to \$1,000,000;

(4) designate an officer of the company to be responsible for the activities of the exclusive agents; and

(5) not be in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner.

(j) Financial Services Company Exclusive Agents. In order to be issued a license as a Financial Services Company Exclusive Agent, an individual must submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the payment of applicable fees and must establish to the satisfaction of the Commissioner that:

(1) the applicant has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) the applicant is not in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner;

(3) the applicant has not been convicted of, pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, the applicant has not been convicted of, pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) the applicant demonstrates the financial responsibility, character, and general fitness required to operate honestly, fairly, and efficiently as a Residential Mortgage Loan Originator under the Act;

(6) the applicant has successfully completed at least 20 hours of NMLS-approved pre-licensing education; and

(7) the applicant has passed both the state component and the national component on a written test that meets the requirements of Finance Code §180.057.

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 April 19, 2010.

TRD-201001932

Caroline Jones

General Counsel

Texas Department of Savings and Mortgage Lending

Effective date: May 9, 2010

Proposal publication date: March 5, 2010

For further information, please call: (512) 475-1352



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER II. RECOGNITION OF NATIONAL CERTIFYING ORGANIZATIONS

FOR NONINVASIVE SCREENING OF CARDIOVASCULAR DISEASE

28 TAC §21.4301

INTRODUCTION. The Commissioner of Insurance adopts new Subchapter II, §21.4301, concerning the recognition of national certifying organizations for noninvasive screening of cardiovascular disease. The new section is adopted with changes to the proposed text published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8458).

REASONED JUSTIFICATION. This new section is necessary to implement that part of House Bill (HB) 1290, enacted by the 81st Legislature, Regular Session, which adds the Insurance Code Chapter 1376. The Insurance Code §1376.003 establishes minimum coverage requirements for screening medical procedures for the early detection of cardiovascular disease. Section 1376.003 mandates that the minimum coverage required to be provided under the section is coverage of up to \$200 for certain screening tests every five years, performed by a laboratory that is certified by a national organization recognized by the Commissioner by rule.

The intent of HB 1290 is to "[expand] access to medical screenings to increase the early detection of cardiovascular disease." (TEXAS STATE SENATE STATE AFFAIRS COMMITTEE, BILL ANALYSIS (ENGROSSED), HB 1290, 81ST Leg., R.S. (May 18, 2009)). Under the Insurance Code §1376.003, a health benefit plan that provides coverage for screening medical procedures must provide this minimum coverage to males older than 45 years of age and younger than 76 years of age and to females older than 55 years of age and younger than 76 years of age, who: (i) are diabetic; or (ii) have a risk of developing coronary heart disease, based on a score derived using the Framingham Heart Study coronary prediction algorithm that is intermediate or higher. According to the bill analysis, "[by] requiring health plans to provide some coverage for these screenings, more individuals will benefit from early detection, possibly saving lives and reducing related long-term medical care expenses." The Insurance Code §1376.003 mandates that covered individuals who qualify for screening services will be provided a minimum coverage of up to \$200 for noninvasive screening tests for atherosclerosis and abnormal artery structure and function using either: (i) computed tomography scanning measuring coronary artery calcification (CT screening); or (ii) ultrasonography measuring carotid intima-media thickness and plaque (IMT screening). New §21.4301 is necessary for the recognition of national certifying organizations for laboratories for purposes of the minimum coverage requirement in the Insurance Code §1376.003 as mandated by that section.

Following publication of the proposed new section in the *Texas Register* on November 27, 2009, the Department received written comments from interested parties. In response to the written comments, the Department has changed some of the proposed language in the text of the rule as adopted. None of the changes made to the proposed text materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. The Department has made a change to §21.4301(3) as proposed in response to comment. Section 21.4301(3) as proposed provides that the Commissioner recognizes "an organization recognized by the Centers for Medicare and Medicaid Services" pursuant to the Insurance Code §1376.003(b). Section 1376.003(b) requires the Commissioner to recognize national organizations that cer-

tify laboratories to perform the screening tests for atherosclerosis and abnormal artery function that are set forth in the Insurance Code §1376.003(b)(1) and (2). The Department has received a written comment stating that the statutory requirement concerning certified laboratories is ambiguous and contradictory because the spectrum of providers that furnish such services include physician practices, hospitals, and imaging centers. The commenter asserts that each of these provider types may be accredited by the certifying organizations included in §21.4301 as proposed. As such, the commenter opines that a reasonable interpretation of the Insurance Code §1376.003 requires minimum coverage for the designated screening tests not only when performed by a laboratory, but any time the test is performed by a person certified by a recognized certifying organization to perform the test. The Department has changed §21.4301(3) in response to this comment to clarify that the scope of the paragraph includes "a certifying organization recognized by the Centers for Medicare and Medicaid Services" among those organizations that may certify a laboratory for purposes of the Insurance Code §1376.003. Additionally, new §21.4301 retains the proposed language identifying that the certification in question applies to a laboratory. New §21.4301 as changed therefore clarifies that there are three categories of national certifying organization that the Commissioner recognizes for purposes of the Insurance Code §1376.003: (i) the American College of Radiology; (ii) the Intersocietal Accreditation Commission; or (iii) a certifying organization recognized by the Centers for Medicare and Medicaid Services (CMS). This change clarifies that entities directly recognized by CMS to perform the designated cardiovascular screening tests are not necessarily within the scope of §21.4301. Rather, §21.4301 provides that the Commissioner recognizes those certifying organizations recognized by CMS to provide certification of laboratories for the performance of the subject screening tests. Read as a whole, §21.4301 as changed clarifies that the Commissioner recognizes organizations in the capacity of laboratory certification to perform the CT and IMT screening tests rather than in any other capacity. This interpretation reflects the statutory minimum coverage requirement concerning cardiovascular screening tests performed by a laboratory as provided in the Insurance Code §1376.003 without expanding the requirement in a manner not specified in the statute.

HOW THE SECTION WILL FUNCTION. New §21.4301 recognizes the following organizations for the purpose of providing certification for laboratories that perform screening tests for atherosclerosis and abnormal artery structure and function in accordance with the Insurance Code §1376.003: (i) the American College of Radiology; (ii) the Intersocietal Accreditation Commission; or (iii) a certifying organization recognized by the Centers for Medicare and Medicaid Services.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Expansion/revision of provider credentialing.

Comment: A commenter states that HB 1290 is intended to provide coverage for early detection of hidden cardiovascular disease in the at-risk yet asymptomatic population; i.e., healthy-looking individuals with two or more cardiovascular risk factors. The commenter states that such individuals are found only at the primary care level and rarely appear at secondary or tertiary care facilities such as hospitals or advanced cardiovascular centers. The commenter opines that, in order to reach the target population, the recognition of a certifying organization should not effectively prohibit testing performed at primary care practices. To address this concern, the commenter recommends adoption of

existing CMS standards concerning noninvasive vascular testing. The commenter accordingly offers guidance issued by the Texas Medicare Administrative Contractor in *Limited Coverage Determination L26744* to suggest that: (i) physicians performing and/or interpreting the non-invasive vascular diagnostic studies be required to demonstrate documented training through recent residency training or post-graduate Continuing Medical Education (CME) and experience and to maintain that documentation for post-payment review; and (ii) technologists performing the non-invasive vascular diagnostic studies must demonstrate competency via a credential in vascular ultrasound technology. Such credentials would include: (i) Registered Vascular Specialist, provided by Cardiovascular Credentialing International; (ii) Registered Vascular Technologist, provided by the American Registry of Diagnostic Medical Sonographers; or (iii) Vascular Sonographer, provided by the American Registry of Radiologic Technologists, Sonography. The commenter additionally recommends inclusion of another standard from the Texas Medicare Administrative Contractor guidance, such that the studies may be performed in a facility or vascular laboratory accredited by the American College of Radiology (ACR) Vascular Ultrasound Accreditation Program or the Intersocietal Commission for the Accreditation of Vascular Laboratories. The commenter states that such a standard would be consistent with current insurance industry standards and the intent of the legislation while simultaneously satisfying concerns regarding the qualifications of providers. Another commenter states that recognition of only the national certifying organizations proposed by the Department will result in the provision of access to cardiovascular risk stratification only through the provision of calcium scoring. The commenter indicates that calcium scoring tests deliver an amount of radiation that is not justified for a screening indication and increase the risk for radiation-induced cancer for patients that receive repeated coronary artery calcium CT scans. The commenter states that ultrasound imaging, in contrast, does not use ionizing radiation or require contrast and has been demonstrated to be safe over decades of use. The commenter further states that the Intersocietal Accreditation Commission (IAC) is considering development of a program for the carotid intima-media thickness (IMT) measurement that would accept applications for accreditation in late summer 2010 and that would involve 12 - 16 weeks for processing of the applications. The commenter also notes that the proposed IAC standard will, according to the IAC, require competence in the performance of duplex scanning in the extracranial system. The commenter asserts that Doppler spectral analysis: (i) is not needed for IMT testing; (ii) is much more technically demanding than the imaging required for carotid IMT testing; and (iii) will result in establishing an unreasonable standard that will limit the number of potential providers to a population not likely to be involved in cardiovascular prevention. As to the current accreditation program for complex arterial testing, the commenter asserts that there are approximately 90 accredited vascular facilities in Texas, primarily concentrated in large cities and including vascular surgery and radiology practices. The commenter asserts that neither of these practice types are appropriate candidates for risk stratification screening because: (i) vascular surgery practices manage patients who have known or suspected cardiovascular disease; and (ii) radiology practices do not manage patients but instead receive referrals for specific imaging services. By contrast, the commenter opines that a primary care physician is better positioned to integrate test results into overall healthcare planning for individual patients and to tailor such planning on an individual basis. For these reasons, the commenter recommends adoption of the following rule text:

"With respect to ultrasonography measuring carotid intima-media thickness and plaque, a health benefit plan shall not deny coverage for a screening test described in §21.4301 of this subchapter (relating to Applicability), [sic] provided that the test is performed by a person or laboratory who meets one of the following standards. The test may be performed by a non-physician provider who is certified in ultrasonography by an organization recognized by the Centers for Medicare and Medicaid Services, such as the American Registry for Diagnostic Medical Sonographers (ARDMS) or Cardiovascular Credentialing International (CCI) or, upon such time as a laboratory accreditation program for carotid intima media [sic] thickness testing has been established by one of the following organizations: [i] The American College of Radiology; [ii] The Intersocietal Accreditation Commission [IAC]; [iii] An organization recognized by the Centers for Medicare and Medicaid Services; or [iv] Another organization that the Commission may recognize at some future time. Additionally, the carotid IMT test can be performed personally by a board-certified physician, who can demonstrate training in the performance of ultrasonography measuring carotid intima-media thickness testing." The commenter asserts that this suggested language is consistent with HB 1290 in that it allows for certified providers to be "deemed" by health plan issuers. The commenter states that the suggested language also allows for issuer discretion to negotiate with physician providers on the subject of demonstrated training prior to identifying qualified providers. The commenter argues that the legislative language is ambiguous and contradictory in requiring "certified laboratories" to provide the screening services indicated in §1376.003 because the spectrum of providers that furnish such services include physician practices, hospitals, and imaging centers. The commenter asserts that each of these provider types may be accredited by the certifying organizations included in §21.4301 as proposed. The commenter, therefore, opines that a reasonable interpretation of the Insurance Code §1376.003 requires minimum coverage for the designated screening tests not only when performed by a laboratory, but when performed by a person certified to perform the test. The commenter further argues that recognition of individual certifications would be consistent with the introduction of the proposal, which referred to "recognition of provider credentials." A third commenter opines that neither the IAC nor the ACR provides a program for providers of IMT testing at this time and states that, should one be developed, the commenter does not believe the program will be an appropriate verification of provider competence. The commenter asserts that: (i) such programs historically address facility accreditation rather than certification of individuals; and (ii) such accreditation requirements are generally more extensive and involve coordination of various individual activities within the institution. The commenter states that such requirements are not necessary to determine physician competency. As such, the commenter requests that the Department reconsider its proposed approach to validating the competence of providers.

Agency Response: The Department disagrees with the suggested changes. The Insurance Code §1376.003(b) requires the Commissioner to recognize a national certifying organization for laboratories for purposes of minimum coverage requirements under §1376.003. Specifically, §1376.003 specifies that the minimum coverage required to be provided under the section is coverage of up to \$200 for designated noninvasive screening tests "performed by a laboratory that is certified by a national organization recognized by the commissioner by rule..." HB 1290 does not address recognition of certifying organizations or other standards for specific application to individual physicians and

technologists, and the existence of individual certification programs does not alter the plain language of the statute. The Department further disagrees that recognition of national certifying organizations for laboratories effectively prohibits testing outside of the certified laboratory setting. A health benefit plan that provides coverage for noninvasive screening tests for atherosclerosis and abnormal artery structure and function is not prohibited under HB 1290 from continuing such coverage, including coverage of testing performed at primary care facilities. HB 1290 does not diminish the extent of screening coverage obligations under health benefit plans. Instead, it creates a minimum standard for coverage that a health benefit plan is required to provide. In response to comment that recognition of "certified laboratories" creates an ambiguity given the wide spectrum of providers that furnish cardiovascular screening tests, the Department has changed §21.4301(3). Section 21.4301(3) as proposed provides that the Commissioner recognizes "an organization recognized by the Centers for Medicare and Medicaid Services" pursuant to the Insurance Code §1376.003(b). Section 1376.003(b) requires the Commissioner to recognize national organizations that certify laboratories to perform the screening tests for atherosclerosis and abnormal artery function that are set forth in the Insurance Code §1376.003(b)(1) and (2). The Department has changed §21.4301(3) to include "a certifying organization recognized by the Centers for Medicare and Medicaid Services" among those organizations that may certify a laboratory for purposes of the Insurance Code §1376.003. Additionally, new §21.4301 retains the proposed language identifying that the certification in question applies to a laboratory. New §21.4301 as changed therefore clarifies that there are three categories of national certifying organization that the Commissioner recognizes for purposes of the Insurance Code §1376.003: (i) the American College of Radiology; (ii) the Intersocietal Accreditation Commission; or (iii) a certifying organization recognized by the Centers for Medicare and Medicaid Services (CMS). This change clarifies that persons or entities directly recognized by CMS to perform the designated cardiovascular screening tests are not necessarily within the scope of §21.4301. Rather, §21.4301 provides that the Commissioner recognizes those certifying organizations recognized by CMS to provide certification of laboratories for the performance of the subject screening tests. Read as a whole, §21.4301 as changed clarifies that the Commissioner recognizes organizations in the capacity of laboratory certification to perform the CT and IMT screening tests rather than in any other capacity. This interpretation reflects the statutory minimum coverage requirement concerning cardiovascular screening tests performed by a laboratory as provided in the Insurance Code §1376.003 without expanding the requirement in a manner not specified in the statute. The laboratories that will qualify to provide services pursuant to the minimum coverage requirement established in the Insurance Code §1376.003 will be those laboratories that are certified to perform screening tests for atherosclerosis and abnormal structure and function through CT scanning measuring coronary artery calcification or through ultrasonography measuring carotid IMT and plaque by: (i) The ACR; (ii) the IAC; or (iii) another certifying organization recognized by CMS. Health benefit plans may elect to provide additional coverage for screening tests for cardiovascular disease performed in settings other than that specified in the Insurance Code §1376.003 for purposes of minimum coverage requirements. However, such additional coverage is neither required under HB 1290 nor subject to the certification standard established in §1376.003. The Department further clarifies that new §21.4301 recognizes national organizations that may certify a

laboratory for purposes of the minimum requirements specified in the Insurance Code §1376.003, as mandated by that section. New §21.4301 does not recognize specific standards that are utilized by those national organizations. As such, future developments with respect to the certification standards used by the recognized organizations will not require additional rulemaking *per se*. The Department will, however, continue to monitor this issue to determine whether further rulemaking is required to address future developments in the certifications applicable to laboratories performing these screening services. Should such rulemaking become necessary, §1376.003 authorizes the Commissioner to undertake such rulemaking with respect to recognition of national certifying organizations for purposes of the minimum coverage requirements established in that section. Inclusion of a provision in the rule to that effect will not affect the underlying statutory authority and is not necessary. Finally, the term "provider" in general application includes not only physicians but also medical facilities. For this reason, reference to provider credentials in discussing certification of laboratories for purposes of §1376.003 is appropriate.

Reporting Requirement.

Comment: A commenter recommends that the Department require health plans to report to the Department by December 31, 2010, the number of providers that have been deemed to provide the screening services as well as the number of health plan members that have obtained the service. The commenter asserts that this information will assist the public and the legislature to understand the access that has been provided under HB 1290.

Agency Response: The Department disagrees with the suggested requirement. The suggested reporting requirement constitutes new subject matter and would improperly impose a requirement not contemplated in the proposal. However, the Department will monitor to determine whether future rulemaking is required or whether future data collection activities with respect to access to this minimum coverage requirement are necessary.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION.

For with change: The Society of Heart Attack Prevention and Eradication, SonoSite Inc.

Against: Advanced Center for the Prevention of Heart Attack and Stroke at the Grace Clinic.

STATUTORY AUTHORITY. The new section is adopted under the Insurance Code §1376.003(b) and §36.001. The Insurance Code §1376.003(b) provides that in order to qualify for the minimum coverage specified in §1376.003(b), the screening tests for atherosclerosis and abnormal artery structure and function must be performed by a laboratory that is certified by a national organization recognized by the Commissioner by rule. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§21.4301. Recognition.

The Commissioner recognizes the following organizations pursuant to Insurance Code §1376.003(b), which requires the Commissioner to recognize national organizations that certify laboratories to perform the screening tests for atherosclerosis and abnormal artery structure and function that are set forth in the Insurance Code §1376.003(b)(1) and (2):

- (1) the American College of Radiology;
- (2) the Intersocietal Accreditation Commission; or
- (3) a certifying organization recognized by the Centers for Medicare and Medicaid 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 April 21, 2010.

TRD-201001975

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: May 11, 2010

Proposal publication date: November 27, 2009

For further information, please call: (512) 463-6327



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.79

The Comptroller of Public Accounts adopts the amendment to §3.79, concerning standard presumptive value, without changes to the proposed text as published in the January 22, 2010, issue of the *Texas Register* (35 TexReg 437), to reflect legislative changes and policy clarifications as follows:

Subsection (a)(4)(A) is amended to clarify that a franchised dealer's license is authorized pursuant to Occupations Code, Chapter 2301.

Subsection (a)(4)(H) is amended to reflect a statutory change pursuant to House Bill 2216, 80th Legislature, 2007, effective June 15, 2007 which amends Transportation Code, Chapter 503, Subchapters A and B, to include an independent mobility motor vehicle dealer as a licensed motor vehicle dealer.

Subsection (a)(9) is amended to reflect a statutory change pursuant to House Bill 3097, 81st Legislature, 2009, effective September 1, 2009 which amended the Transportation Code by adding Subchapter M creating the Department of Motor Vehicles.

New subsection (a)(4)(I) contains information found in current subsection (a)(4)(H) reflecting that the term dealer includes any other dealer as provided by Transportation Code, Chapter 503, Subchapter B, but not a drive-a-way operator; and adding that a salvage vehicle dealer as defined in Transportation Code, §501.91 is not a dealer for tax purposes.

Subsection (c)(2) is amended to reflect and clarify agency policy that a certified appraisal may be substituted for the standard presumptive value calculation, provided the certified appraisal is greater than the amount paid or to be paid for the motor vehicle listed on the title application and tax statement.

New subsection (e)(7) is added to reflect a statutory change pursuant to House Bill 261, 80th Legislature, 2007, effective September 1, 2007, which amends Tax Code, §152.0412 to exclude motor vehicle sold by a governmental entity from the standard presumptive value calculation.

Subsection (f)(2) is amended to clarify agency policy that a purchaser of a used vehicle that paid tax on the standard presumptive value calculation may request a refund from the comptroller based on the value of a valid certified appraisal, provided the certified appraisal is greater than the amount paid or to be paid for the motor vehicle listed on the title application and tax statement.

The phrase "taxable value" is substituted for the phrase "sales price" throughout the section to be more consistent with the wording in Chapter 152 and the intent of the legislature.

Nonsubstantive changes are made throughout the section to improve readability and clarity.

No comments were received regarding adoption of the amendment.

The 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, §152.0412 (Standard Presumptive Value Use by Tax Assessor-Collector).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002014

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: May 16, 2010

Proposal publication date: January 22, 2010

For further information, please call: (512) 475-0387



34 TAC §3.84

The Comptroller of Public Accounts adopts an amendment to §3.84, concerning exemption for orthopedically handicapped person, without changes to the proposed text as published in the January 22, 2010, issue of the *Texas Register* (35 TexReg 440). The rule reflects legislative changes and policy clarifications and reorganizes information to improve clarity and readability as follows:

Subsection (a)(1) and (2) are amended to clarify what modifications qualify a motor vehicle for exemption. Subsection (a)(3) now defines a "licensed practitioner of the healing arts" and the language in new subsection (a)(4) reflects longstanding agency policy that "primarily driven by, or primarily used" means at least 80% of the motor vehicle's operating time.

New subsection (d) reflects agency policy concerning modifications that do not exempt a motor vehicle from tax.

New subsection (e) concerns documentation that is required to claim the exemption provided by this section and amends the in-

formation that is currently in subsection (d) relating to documentation requirements. It reflects a statutory change in paragraph (1) pursuant to House Bill 236, 81st Legislature, 2009, effective January 1, 2010, which amends Tax Code, §152.086 by adding a requirement for documentation to be presented to a seller in order for a motor vehicle to be exempt from motor vehicle sales tax when purchased by or for an orthopedically handicapped person.

Subsection (e)(3) reflects longstanding agency policy with respect to documentation required to be presented at the time of titling and/or registration of a motor vehicle for which the exemption provided by this section is claimed.

New subsection (f) contains information found in current subsection (e) about the eligibility requirements for modifying a motor vehicle within two years of purchase. New subsection (g) explains the requirements for claiming a refund directly from the comptroller for a motor vehicle on which tax is paid but is then modified and is otherwise eligible for this exemption.

Nonsubstantive changes are made throughout the section to improve readability and clarity.

No comments were received regarding adoption of the amendment.

The 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, §152.086 (Motor Vehicles Driven by Handicapped Persons).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002019

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: May 16, 2010

Proposal publication date: January 22, 2010

For further information, please call: (512) 936-6472



CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER D. APPRAISAL REVIEW BOARD

34 TAC §9.803

The Comptroller of Public Accounts adopts an amendment to §9.803, concerning requirements for appraisal review board records, without changes to the proposed text as published in the March 12, 2010, issue of the *Texas Register* (35 TexReg 2126).

This section is being amended to delete reference to the deadline for appeal to district court in response to House Bill 986, 81st Legislature, 2009, which changes the deadline for appeal. This section is also being amended to improve the appraisal review

board record requirements and to delete unnecessary language. Non-substantive changes are also made to clarify the requirements and improve general readability.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §41.68, which provides the comptroller with the authority to prescribe the form and manner in which appraisal review boards shall keep records of their proceedings.

The amendment implements Tax Code, §41.68.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2010.

TRD-201002015

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: May 16, 2010

Proposal publication date: March 12, 2010

For further information, please call: (512) 475-0387



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 83, concerning Consumer Loans. Chapter 83 contains Subchapter A, concerning General Provisions, Subchapter B, concerning Authorized Activities, Subchapter C, concerning Application Procedures, Subchapter D, concerning License, Subchapter E, concerning Interest Charges on Loans, Subchapter F, concerning Alternate Charges for Consumer Loans, Subchapter G, concerning Interest and Other Charges on Secondary Mortgage Loans, Subchapter H, concerning Refunds for Precomputed Loans, Subchapter I, concerning Insurance, Subchapter J, concerning Duties and Authority of Authorized Lenders, and Subchapter K, Prohibitions on Authorized Lenders.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to laurie.hobbs@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201002066

Leslie L. Pettijohn
Commissioner

Office of Consumer Credit Commissioner

Filed: April 28, 2010



General Land Office

Title 31, Part 1

The Texas General Land Office (GLO) files this notice of its intent to review and proposes the readoption of rules under the following chapters of Title 31, Part 1 of the Texas Administrative Code:

Chapter 17. Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land

Chapter 25. Beach Cleaning and Maintenance

This review of the chapters is conducted under the GLO's agency rule review plan, which was filed on April 14, 2010, and was published in the April 23, 2010, issue of the *Texas Register* (35 TexReg 3297).

The GLO will take public comments on this proposed rule review for a thirty-day period following the date of this notice's publication in the *Texas Register*. During the review process, the GLO will assess whether the reasons for initially adopting the rule still exist. The GLO may amend rules following the review to reflect current statutory requirements and agency practices. The GLO may also combine, or reduce rules for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text. Any proposed amendments to or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional thirty-day public comment period prior to final adoption or repeal.

The GLO will address any comments received concerning this proposed rule review. Any comments or questions should be directed to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin TX 78711, phone number (512) 475-1859, facsimile number (512) 463-6311, or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the publication of this notice in the *Texas Register*.

TRD-201002080

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs
General Land Office

Filed: April 28, 2010



Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission files this notice of intent to review Texas Administrative Code, Title 13, Part 1, Chapter 9, concerning Talking Book library services for persons who are blind or have a physical impairment, in accordance with Government Code §2001.039, that requires state agencies to review and consider for readoption each of their rules every four years.

The rules were adopted pursuant to the Human Resources Code, §91.082 that requires the State Library and Archives Commission to

establish a central media center for persons unable to use ordinary print materials, and Government Code §441.006 that provides the Commission with the authority to govern the Texas State Library.

The rules are necessary to establish procedures and policies under which eligible persons receive services from the Talking Book Program of the Texas State Library and Archives Commission. Comments on the review of Chapter 9 may be in writing submitted to Ava Smith, Director, Talking Book Program, P.O. Box 12927, Austin, Texas 78711-2927; may be faxed to (512) 936-2306; or may be submitted electronically to ava.smith@tsl.state.tx.us. For further information or questions, concerning this proposal, please contact Ava Smith at (512) 463-5428.

TRD-201002017

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Filed: April 26, 2010



Adopted Rule Reviews

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 247, Educators' Code of Ethics, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 247 in the February 26, 2010, issue of the *Texas Register* (35 TexReg 1775).

Relating to the review of 19 TAC Chapter 247, the SBEC finds that the reasons for adoption continue to exist and readopts the rules. Revisions are anticipated to the SBEC rules in 19 TAC Chapter 247 to clarify and make more specific the standards in the Educators' Code of Ethics. The Texas Education Agency staff anticipate presenting proposed revisions at the June 2010 SBEC meeting.

The SBEC received no comments related to the rule review of 19 TAC Chapter 247.

This concludes the review of 19 TAC Chapter 247.

TRD-201002028

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,
Texas Education Agency

State Board for Educator Certification

Filed: April 26, 2010



The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 250, Agency Administration, pursuant to the Texas Government Code, §2001.039. The rules reviewed by the SBEC in 19 TAC Chapter 250 are organized under the following subchapters: Subchapter A, Purchasing; Subchapter B, Rulemaking Procedures; Subchapter C, Training and Education for Employees; and Subchapter D, Negotiation and Mediation Procedures Relating to Certain Contract Disputes. The SBEC proposed the review of 19 TAC Chapter 250 in the February 26, 2010, issue of the *Texas Register* (35 TexReg 1775).

Relating to the review of 19 TAC Chapter 250, the SBEC finds that the reasons for the adoption of Subchapters A and B continue to exist and proposes to readopt the rules with changes to reflect current law and the fact that, pursuant to the Texas Education Code, §21.035, the Texas Education Agency provides the SBEC's administrative functions and services, which include purchasing, rulemaking, and contracts. The SBEC is proposing an amendment to §250.1; the repeal of §§250.2, 250.3, and 250.20; and new §250.3 and §250.20, which may be found in the Proposed Rules section of this issue.

The SBEC finds that the reasons for the adoption of Subchapters C and D do not continue to exist. The SBEC is proposing the repeal of §§250.30-250.34 and §§250.40-250.49, which may be found in the Proposed Rules section of this issue.

The SBEC received no comments related to the rule review of 19 TAC Chapter 250.

This concludes the review of 19 TAC Chapter 250.

TRD-201002029

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,
Texas Education Agency

State Board for Educator Certification

Filed: April 26, 2010



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §11.73

Table 1. Surface Mining and Reclamation Division Forms for Uranium Exploration

Form Number	Form Title	Creation or Last Revision Date	Rule Number (16 TAC § __) or Other Authority
SMRD-3U	Application to Conduct Uranium Exploration Activities by Drilling	Rev. 09/09	§11.132; §11.133
SMRD-5U	Application to Transfer a Uranium Exploration Permit	09/09	§11.135
SMRD-38U	Cased Exploration Well Completion Report	09/09	§11.139
SMRD-39U	Borehole Plugging Report	09/09	§11.139

Figure: 16 TAC §11.142(a)

Table 1. Groundwater Monitoring Parameters

Major Constituents	Minor Constituents	Trace Constituents	Radionuclides	Additional Parameters
Bicarbonate (HCO ₃)	Boron (B)	Arsenic (As)	Radium 226	pH (field and lab)
Calcium (Ca)	Carbonate (CO ₃)	Selenium (Se)	Gross Alpha	Temperature (field and lab)
Chloride (Cl)	Fluoride (F)		Gross Beta	Total alkalinity
Magnesium (Mg)	Iron (Fe) (Total and Dissolved)		Uranium (U)	Total Dissolved Solids (TDS)
Molybdenum (Mo)	Manganese (Mn) (total and dissolved)			Specific conductance
Sodium (Na)	Nitrate (NO ₃) or Nitrate as (N)			
Sulfate (SO ₄)	Potassium (K)			

Figure: 19 TAC §250.20(a)

STATE BOARD FOR EDUCATOR CERTIFICATION
Petition for Adoption of a Rule

The Texas Government Code, §2001.021, provides that any interested person may petition an agency requesting the adoption of a rule.

Petitions should be signed and submitted to:

Office of Educator Certification and Standards
Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494

Name:

Affiliation/Organization (if applicable):

Address:

Telephone:

Date:

Proposed rule text (indicate words to be added or deleted from the current text):

Statutory authority for the proposed rule action:

Why is this rule action necessary or desirable?

(If more space is required, attach additional sheets.)

Petitioner's Signature

IN**ADDITION**

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Health and Safety Code and Texas Water Code Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code, and Texas Water Code Section 7.110. Before the State may settle a judicial enforcement action, pursuant to Texas Water Code Section 7.110, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Codes.

Case Title and Court: Settlement Agreement in *Travis County, Texas and the State of Texas v. Little Hope-Moore Water Supply Corporation*; Cause No. D-1-GV-08-001179, 200th Judicial District, Travis County, Texas.

Background: This suit alleges violations of the Texas Health and Safety Code, and Texas Commission on Environmental Quality regulations at a public water supply facility in Van Zandt County, Texas. The Defendant, Little Hope-Moore Water Supply Corporation, is the owner and/or operator of the facility. The suit seeks injunctive relief, civil penalties, attorney's fees and court costs. The alleged violations of the Texas Health and Safety Code, and Texas Commission on Environmental Quality regulation are for failing to properly maintain tanks and other equipment at the facility, and failing to properly maintain records.

Nature of Settlement: The settlement awards \$1,000.00 in civil penalties and \$2,550.00 in attorney's fees to the State. The settlement enjoins Little Hope-Moore Water Supply Corporation to complete one outstanding violation at the facility within 60 days of the proposed judgment. The settlement also has injunction language that requires Little Hope-Moore Water Supply Corporation to stay in compliance with the Texas Health and Safety Code, and Texas Commission on Environmental Quality regulations.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to David L. Green, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-3205, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201002025
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: April 26, 2010

◆ ◆ ◆

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - March 2010

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period March 2010, as required by Tax Code, §202.058, is \$62.10 per barrel for the three-month period beginning on December 1, 2009, and ending February 28, 2010. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of March 2010, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period March 2010, as required by Tax Code, §201.059, is \$4.27 per mcf for the three-month period beginning on December 1, 2009, and ending February 28, 2010. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of March 2010, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201001978
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 22, 2010

◆ ◆ ◆

Notice of Availability and Request for Applications

Pursuant to Chapter 403, §403.352 and §403.358, Texas Government Code; Chapter 134, §134.002 and §134.008, Texas Education Code; and House Bill Nos. 3 and 1935, 81st Texas Legislature, Regular Session (2009), the Comptroller of Public Accounts (Comptroller), announces this Notice of Availability and Request for Applications (RFA #E-JG4-2010) and invites applications from qualified and interested public junior colleges and public technical institutes for Jobs and Education for Texans' (JET) grants to defray the start-up costs associated with the development of new career and technical education programs that meet the requirements consistent with the terms of the Request for Applications and this notice. The Comptroller reserves the right to award more than one grant under the terms of the RFA. If a grant award is made under the terms of this RFA, the recipient should anticipate an effective date no earlier than August 5, 2010, or as soon thereafter as practical.

Contact: Parties interested in submitting an application should contact Kevin Deiters, Director, Educational Opportunities & Investment Division, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 510, Austin, Texas 78774, (512) 463-8473. The Appli-

ation and instructions will be available at <http://www.everychanceeverytexas.org/funds> after 10:00 a.m. CZT on May 7, 2010, and during normal business hours thereafter.

Questions: All written inquiries and questions must be received at the above-referenced address not later than 2:00 p.m. (CZT) on May 14, 2010. Prospective applicants are encouraged to fax Questions to (512) 463-4208 or email Questions to JETgrants@cpa.state.tx.us to ensure timely receipt. On or about May 21, 2010, the Comptroller expects to post responses to questions at <http://www.everychanceeverytexas.org/funds>. Late questions will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of questions in the Issuing Office.

Closing Date: Applications must be delivered in the Issuing Office to the attention of the Director no later than 2:00 p.m. (CZT), on Friday, June 4, 2010. Late applications will not be considered under any circumstances. Respondents shall be solely responsible for verifying the timely receipt of applications in the Issuing Office.

Evaluation Criteria: Applications will be evaluated under the evaluation criteria outlined in the application instructions. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all applications submitted. The Comptroller is not obligated to make a grant award or to execute a contract on the basis of this notice or RFA. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or RFA.

The anticipated schedule of events pertaining to this grant is as follows: Issuance of RFA - May 7, 2010, after 10:00 a.m. CZT; Questions Due - May 14, 2010, 2:00 p.m. CZT; Official Responses to Questions posted - May 21, 2010; Applications Due - June 4, 2010, 2:00 p.m. CZT; Grant Award/Contract Execution - August 5, 2010, or as soon thereafter as practical; Commencement of Grant Funding - August 5, 2010, or as soon thereafter as practical.

TRD-201002065
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 28, 2010



Notice of Contract Award

Pursuant to Chapters 403, 2305; and Chapter 2156, §2156.121, Texas Government Code, the Comptroller of Public Accounts (Comptroller) State Energy Conservation Office (SECO) announces the following contract awards under RFP 195e:

The notice of request for proposals was published in the October 23, 2009, issue of the *Texas Register* (34 TexReg 7379).

The contractors will create and implement a green collar workforce development program for certification in renewable energy fields.

Three contracts were awarded as follows:

1. Texas State Technical College Waco, 3801 Campus Drive, Waco, Texas 76705. The total amount of the contract is not to exceed \$275,000.00. The term of the contract is March 23, 2010 through May 30, 2011, with option to renew for up to two (2) additional one-year terms, one (1) year at a time;
2. Tyler Junior College, 1327 South Baxter Ave., Tyler, Texas 75701. The total amount of this contract is not to exceed \$100,000.00. The term of the contract is April 9, 2010 through May 31, 2011, with option to renew for up to two (2) additional one-year terms, one (1) year at a time; and

3. Texas State Technical College West Texas, 300 Homer K. Taylor Drive, Sweetwater, Texas 79556. The total amount of the contract is not to exceed \$286,000.00. The term of the contract is April 16, 2010 through May 30, 2011, with option to renew for up to two (2) additional one-year terms, one (1) year at a time.

TRD-201001992
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 23, 2010



Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and §403.301 and §403.3011, Texas Government Code; and §5.102, Property Tax Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #197a) from qualified, independent individuals and firms to provide consulting services to Comptroller. The successful respondent(s) will assist Comptroller in conducting Methods & Assistance Program Reviews (MAPs) of Harris, Tarrant, Dallas and Bexar County Appraisal Districts. Comptroller reserves the right to select multiple contractors to participate in conducting the reviews as set forth in the RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about July 1, 2010, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, May 7, 2010, after 10 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Electronic State Business Daily at: <http://esbd.cpa.state.tx.us> after 10 a.m. (CZT) on Friday, May 7, 2010.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 463-3669, not later than 2:00 p.m. (CZT), on May 21, 2010. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily no later than Friday, May 28, 2010, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above no later than 2 p.m. (CZT), on Friday, June 11, 2010. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of master contracts for assignments from the pool selected, if any. Comptroller reserves the right to award one or more contracts under this RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of

any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - May 7, 2010, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Posted - May 21, 2010, 2 p.m. CZT; Official Responses to Questions Posted - May 28, 2010, or as soon thereafter as practical; Proposals Due - June 11, 2010, 2 p.m. CZT; Contract Execution - July 1, 2010, or as soon thereafter as practical; Commencement of Project Activities - July 1, 2010, or as soon thereafter as practical.

TRD-201002062

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: April 28, 2010



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/03/10 - 05/09/10 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/03/10 - 05/09/10 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-201002040

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 26, 2010



Texas Education Agency

Request for Applications Concerning Connections Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under request for application (RFA) #701-10-114 from Texas high-need local educational agencies (LEAs) and collaboratives consisting of high-need LEAs and other LEAs. In order to qualify for high-need status, an LEA must serve at least 2,500 or 22 percent of children from families with incomes below the poverty line as identified by 2007 U.S. Census data. In addition, the LEA must serve one or more campuses that meet at least one of the following criteria: (1) the campus was identified for improvement or corrective action under the No Child Left Behind Act of 2001, Title I, Section 1116; or (2) the campus has a substantial need for assistance in acquiring and using technology as reflected in the Texas Campus STaR Chart.

Collaboratives eligible to apply for Connections Grant funding must include at least one high-need LEA and at least one LEA that can demonstrate all three of the following criteria: (1) technology and proven teaching practices with technology have been effectively integrated into instruction, and the LEA is able to demonstrate that its integration of technology has improved classroom instruction in the core academic subjects and made students better prepared to meet challenging state academic content and student academic achievement standards;

(2) classroom instruction is primarily delivered through digital content for learning at school and at home, in lieu of traditional print textbooks; and (3) classroom instruction and LEA administrative communications, practices, and policies leverage students' personal electronic devices for learning in school, at home, and in the community.

The collaborative may also include any of the following: an institution of higher education (IHE) that meets further reporting and performance criteria defined in the RFA; a for-profit organization in the technology product or services industry or with expertise in the application of technology for instruction; a public or nonprofit organization with expertise in the application of technology for instruction; or other educational entities such as education service centers (ESCs), libraries, and other LEAs with the resources and ability to provide technology-focused programs to participating LEAs. Only an LEA may apply for a grant as a fiscal agent of the collaborative. For-profit entities, nonprofit entities, ESCs, and IHEs are not eligible to apply as fiscal agents.

Description. The Connections Grant is designed to leverage the transformative use of digital content in the classroom, at home, and in the community. Grantees will also model the use of technologies that are most frequently used by students and that many already have at home in order to facilitate the extension of learning time from campus to home. Connections grantees will model teaching and learning practices that use digital content and innovative media tools; model teaching and learning strategies that meet 21st century competencies; and demonstrate high student technology literacy skills. Connections grantees must emphasize flexible learning schedules and flexible learning approaches, which may include extended campus learning hours to increase the availability of Internet access and technology for students and parents.

Dates of Project. The Connections Grant will be implemented during the 2010-2011 and 2011-2012 school years. Applicants should plan for a starting date of no earlier than October 1, 2010, and an ending date of no later than June 30, 2012.

Project Amount. Funding will be provided for approximately five to ten projects. Each project will receive a maximum of \$1 million for the 2010-2011 and 2011-2012 school years. This project is funded 100 percent with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. It is a program requirement that at least one applicant serving students in Grades 6-12 be selected for funding. Priority points are available to applicants meeting this criterion, as well as other priority point criteria, as described in the RFA, Part 2: Program Guidelines, Priorities for Funding. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

Applicants' Conference. An applicants' conference will be held on Tuesday, May 25, 2010, from 9:00 a.m. to 12:00 p.m. on the Texas Educational Telecommunication Network (TETN) available at each regional ESC (TETN Event #7841). To locate the nearest TETN facility, applicants should contact the TETN site manager at their regional ESC. A complete list of ESCs, including contact information, is available on the TEA website at <http://www.tea.state.tx.us/ESC/>.

Questions relevant to the RFA may be emailed to Kathleen H. Ferguson at connectionsgrant@tea.state.tx.us or faxed to (512) 463-9090 prior to Friday, May 21, 2010. These questions, along with other information, will be addressed in the presentation. The conference will be open to all

potential applicants and will provide general and clarifying information about the program and RFA.

The entire applicants' conference will be digitally recorded. Prospective applicants who are not able to attend the applicants' conference may request a password and procedures to download the video stream from the TETN site manager at their local ESC.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. RFAs are no longer available in print. The announcement letter and complete RFA will be posted on the TEA website at <http://burleson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Jeanne Rankin, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in Part 2: Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, June 17, 2010, to be eligible to be considered for funding.

TRD-201002081

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: April 28, 2010



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 7, 2010**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a

proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 7, 2010**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Ballenger Construction Company; DOCKET NUMBER: 2010-0542-WQ-E; IDENTIFIER: RN105829857; LOCATION: Buda, Hays County; TYPE OF FACILITY: highway and street construction; RULE VIOLATED: 30 Texas Administrative Code (TAC) §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(2) COMPANY: City of Charlotte; DOCKET NUMBER: 2010-0182-MWD-E; IDENTIFIER: RN101721033; LOCATION: Atascosa County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010142001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for biochemical oxygen demand (BOD) and pH; PENALTY: \$7,710; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Chevron Phillips Chemical Company, LP; DOCKET NUMBER: 2009-2037-AIR-E; IDENTIFIER: RN100209857; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: ethylene production plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review (NSR) Permit Number 21101, General Condition Number 8, Special Condition (SC) Number 8, Federal Operating Permit (FOP) Number O-01235, General Terms and Conditions and Special Terms and Conditions Number 21, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent the unauthorized release of 202.8 and 265.2 pounds (lbs) of nitrogen oxides (NO_x), 863.28 and 1,855.3 lbs of carbon monoxide (CO), and 215.08 and 1,519.5 lbs of volatile organic compounds from flare 24 during the 24-hour event and 1,704.28 lbs of CO and 420.3 lbs of NO_x during the 49-hour event; PENALTY: \$31,250; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Circle T Promotions, Limited; DOCKET NUMBER: 2010-0064-PWS-E; IDENTIFIER: RN104707435; LOCATION: Hamilton County; TYPE OF FACILITY: show arena with a public water supply (PWS); RULE VIOLATED: 30 TAC §290.46(f)(3)(A)(ii)(III), by failing to maintain a record of water works operations that includes the volume of water treated each week; 30 TAC §290.45(f)(5) and THSC, §341.0315(c), by failing to provide a production capacity of at least 0.6 gallons per minute (gpm) per connection; 30 TAC §290.45(f)(5) and THSC, §341.0315(c), by failing to provide a service pump capacity of at least two gpm per connection and at least 1,000 gpm and the ability to meet peak hourly demands; 30 TAC §290.39(j), by failing to provide notice to the executive director prior to making a change to the disinfection method used at

the facility; and 30 TAC §290.46(k), by failing to obtain approval from the executive director prior to establishing an interconnection with another water supply; PENALTY: \$1,300; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Del Webb Texas Limited Partnership; DOCKET NUMBER: 2010-0168-MLM-E; IDENTIFIER: RN102930690; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a water pollution abatement plan; 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; and 30 TAC §324.6 and 40 CFR §279.22, by failing to clearly mark or label used oil containers with the words "Used Oil"; PENALTY: \$30,375; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3100; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(6) COMPANY: City of Denver City; DOCKET NUMBER: 2010-0562-PST-E; IDENTIFIER: RN101843217; LOCATION: Denver City, Yoakum County; TYPE OF FACILITY: underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; and 30 TAC §334.8(c), by failing to submit initial/renewal UST registration and self-certification form; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(7) COMPANY: Dominion Homes, LP; DOCKET NUMBER: 2010-0579-WQ-E; IDENTIFIER: RN104111422; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2009-1781-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §115.722(c)(1) and §116.115(c), Permit Number 4477, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Federal Heath Sign Company, LLC; DOCKET NUMBER: 2009-0624-AIR-E; IDENTIFIER: RN102570645; LOCATION: Jacksonville, Cherokee County; TYPE OF FACILITY: sign manufacturing plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to have authorization to operate a source of air emissions; and 30 TAC §101.20(2), 40 CFR §63.3890 and §63.44980, and THSC, §382.085(b), by failing to comply with emissions limitations required by the National Emission Standards for Hazardous Air Pollutants; PENALTY: \$15,000; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: G.T.T. General Contractors, Inc.; DOCKET NUMBER: 2010-0580-WQ-E; IDENTIFIER: RN105888176; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a

construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: House of Boats, Inc.; DOCKET NUMBER: 2010-0604-WQ-E; IDENTIFIER: RN102346285; LOCATION: Aransas County; TYPE OF FACILITY: marina; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(12) COMPANY: Houston Refining, LP; DOCKET NUMBER: 2010-0028-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), NSR Flexible Air Permit Number 2167/PSD-TX-985, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Dwight Ball and Linda Ball dba Lazy Acres Mobile Home Park; DOCKET NUMBER: 2009-1966-PWS-E; IDENTIFIER: RN102708153; LOCATION: Baytown, Harris County; TYPE OF FACILITY: mobile home park with PWS; RULE VIOLATED: 30 TAC §290.39(e)(1), by failing to submit plans and specifications for the facility that have been prepared by a licensed, professional engineer for commission review and approval; PENALTY: \$125; ENFORCEMENT COORDINATOR: Tell Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: MANJARI, INC. dba O M Mart; DOCKET NUMBER: 2009-2015-PST-E; IDENTIFIER: RN101900397; LOCATION: Springtown, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; 30 TAC §334.50(b) and the Code, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the USTs; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all spill and overflow prevention devices are maintained in good working condition; and 30 TAC §334.49(b)(2) and the Code, §26.3475(d), by failing to electrically isolate UST system components from the corrosion elements of the surrounding soil, back fill, groundwater, and or other metallic components; PENALTY: \$7,897; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: META VENTURES, INC. dba Fuel Depot 8; DOCKET NUMBER: 2010-0034-PST-E; IDENTIFIER: RN102270477; LOCATION: Houston, Harris County; 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 USTs for releases; PENALTY: \$5,100; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Monument Inn, Inc.; DOCKET NUMBER: 2010-0308-MWD-E; IDENTIFIER: RN101527737; LOCATION: Harris County; TYPE OF FACILITY: restaurant with an associated wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013666001, Effluent Limitations and Monitoring Requirements Number 2, and the Code, §26.121(a), by failing to comply with permitted effluent limits for chlorine; PENALTY: \$3,800; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: NOBLE ENTERPRISES, INC. dba New Lawrence Grocery; DOCKET NUMBER: 2010-0035-PST-E; IDENTIFIER: RN101899490; LOCATION: San Leon, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(1) and (2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifolding, and dynamic back pressure; PENALTY: \$2,487; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Plains Cotton Cooperative Association; DOCKET NUMBER: 2010-0173-IWD-E; IDENTIFIER: RN101788883; LOCATION: Lamb County; TYPE OF FACILITY: textile mill that manufactures denim from raw cotton with an associated wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121, by failing to maintain authorization to operate; PENALTY: \$11,220; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(19) COMPANY: SADIQ CORPORATION dba Shell; DOCKET NUMBER: 2010-0085-PST-E; IDENTIFIER: RN101995074; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifolding, and dynamic back pressure; PENALTY: \$3,728; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: City of Sadler; DOCKET NUMBER: 2009-0840-MWD-E; IDENTIFIER: RN101917714; LOCATION: Grayson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011037001, Effluent Limits and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a), by failing to comply with permit effluent limits for BOD, total suspended solids, and pH; PENALTY: \$11,200; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3100; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: City of San Marcos; DOCKET NUMBER: 2009-2040-EAQ-E; IDENTIFIER: RN105391080; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: road and forcemain wastewater line construction project; RULE VIOLATED: 30 TAC §213.4(a)(1) and §213.5(a)(2), by failing to obtain approval of a sewage collection system plan prior to commencing construction of a regulated activity over the Edwards Aquifer Recharge and Transition Zone; and 30 TAC §213.4(k), Edwards Aquifer Water Pollution Abatement Plan Number 11-08040302, SC Number 2, and the Code, §26.121, by failing to prevent an unauthorized discharge of sediment into or adjacent to water in the state by properly dewatering excavated areas through appropriately selected best management practices; PENALTY: \$4,750; Supplemental Environmental Project (SEP) offset amount of \$3,800 applied to Hill Country Conservancy - Wenzel Tract Quarry - Edwards

Aquifer Recharge & Wetland Restoration; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(22) COMPANY: Shell Oil Company; DOCKET NUMBER: 2009-2090-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 21262, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; SEP offset amount of \$5,000 applied to Houston Regional Monitoring Corporation - Houston Area Monitoring; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: John Ali Hemati dba Station 66; DOCKET NUMBER: 2009-1292-PST-E; IDENTIFIER: RN103937389; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery systems; PENALTY: \$5,296; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 425-6010; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(24) COMPANY: TC Transport, Inc.; DOCKET NUMBER: 2010-0223-PWS-E; IDENTIFIER: RN102648342; LOCATION: Vinton, El Paso County; TYPE OF FACILITY: gas station and convenience store with a PWS; RULE VIOLATED: 30 TAC §290.41(c)(1)(A), by failing to locate the well site a minimum of 150 feet from the facility's USTs; and 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement, or executive director approval for a substitute to the easement requirement, that covers the land within 150 feet of the facility's well; PENALTY: \$339; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(25) COMPANY: Texas Department of Public Safety; DOCKET NUMBER: 2009-1880-AIR-E; IDENTIFIER: RN105482723; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: air curtain incinerator; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-03032/General Operating Permit (GOP) Number 518, Terms and Conditions Number (b)(3)(D)(ii), and THSC, §382.085(b), by failing to submit an annual compliance certification report; 30 TAC §122.143(4) and §122.145(2)(A) and (C), FOP Number O-03032/GOP Number 518, Terms and Conditions (b)(3)(C)(ii)(a) and (c), and THSC, §382.085(b), by failing to timely submit a complete semi-annual deviation report; 30 TAC §122.143(4) and §122.145(2)(B), FOP Number O-03032/GOP Number 518, Terms and Conditions Number (b)(3)(C)(ii)(b), and THSC, §382.085(b), by failing to submit a semi-annual deviation report; and 30 TAC §111.111(a)(8)(A) and §122.143(4), FOP Number O-03032/GOP Number 518, Terms and Conditions Number (b)(10)(A), and THSC, §382.085(b), by failing to prevent visible emissions; PENALTY: \$9,875; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(26) COMPANY: THALJI ENTERPRISES, INC. dba La Marque Mobil; DOCKET NUMBER: 2010-0139-PST-E; IDENTIFIER: RN102881646; LOCATION: La Marque, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC

§115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request; PENALTY: \$3,301; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(27) COMPANY: United Supermarkets, L.L.C. dba United Supermarkets 551; DOCKET NUMBER: 2010-0605-PST-E; IDENTIFIER: RN102433042; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; and 30 TAC §334.8(c), by failing to submit initial/renewal UST registration and self-certification form; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(28) COMPANY: Victoria Simpson dba Dawn Maintenance; DOCKET NUMBER: 2010-0218-LII-E; IDENTIFIER: RN105869648; LOCATION: Spring Branch, Comal County; TYPE OF FACILITY: lot clearing and miscellaneous construction business; RULE VIOLATED: 30 TAC §30.5(b) and §344.30(a)(2) and the Code, §37.003, by failing to refrain from advertising or representing oneself to the public as a holder of a license or registration; PENALTY: \$375; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(29) COMPANY: Westgate Homes, Inc.; DOCKET NUMBER: 2009-1923-MLM-E; IDENTIFIER: RN104812334; LOCATION: Granbury, Hood County; TYPE OF FACILITY: trailer and mobile home refurbishing site; RULE VIOLATED: 30 TAC §111.201 and §330.15(c) and THSC, §382.085(b), by failing to comply with the general prohibition of outdoor burning and dumping or disposal of municipal solid waste within the state of Texas; PENALTY: \$3,545; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: Harold Van Younger, Jr.; DOCKET NUMBER: 2010-0158-LII-E; IDENTIFIER: RN103458360; LOCATION: Houston, Harris County; TYPE OF FACILITY: landscape business; RULE VIOLATED: 30 TAC §344.35(d)(2), by failing to obtain all permits required to install an irrigation system; PENALTY: \$563; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201002044
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 27, 2010



Enforcement Orders

An order was entered regarding Michael French dba Hiram Waste & Recycling, Inc., Docket No. 2008-0289-MSW-E on April 15, 2010 assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201001981

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 22, 2010



Enforcement Orders

An agreed order was entered regarding Joseph Gaber dba Cody's Marker & Marina, and Victoria Gaber dba Cody's Market & Marina, Docket No. 2006-0682-MLM-E on April 15, 2010 assessing \$14,451 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arfa & Shifa Business, Inc. dba Oaks Cleaners, Docket No. 2007-0560-MLM-E on April 15, 2010 assessing \$9,495 in administrative penalties with \$1,899 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Vega Waste Disposal Services, Inc. dba Vega Waste Disposal Services, Docket No. 2007-0715-MSW-E on April 15, 2010 assessing \$25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rapid Marine Fuels, LLC dba Rapid Environmental Services, LLC, Docket No. 2007-1894-MLM-E on April 15, 2010 assessing \$6,092 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco, Inc. (R&M), Docket No. 20080643AIRE on April 15, 2010 assessing \$10,250 in administrative penalties with \$2,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding US Fiberglass, Inc., Docket No. 2008-1181-AIR-E on April 15, 2010 assessing \$2,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Lee Dry Clean, Inc., Docket No. 2008-1263-DCLE on April 15, 2010 assessing \$9,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2008-1350-AIR-E on April 15, 2010 assessing \$10,273 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Romelio Flores dba Super Stop 30, Docket No. 2008-1934-PST-E on April 15, 2010 assessing \$16,519 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Munor Rahman, Inc. dba Super Star, Docket No. 2009-0118-PST-E on April 15, 2010 assessing \$2,055 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-0736, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Chillicothe, Docket No. 2009-0202-MWD-E on April 15, 2010 assessing \$59,820 in administrative penalties with \$59,820 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Saguario, Corp. dba El Paso C&D Recycling Plant, Docket No. 2009-0831-MLM-E on April 15, 2010 assessing \$12,015 in administrative penalties with \$2,403 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 Tom Dye, Contractor, LLC, Docket No. 2009-0903-MLM-E on April 15, 2010 assessing \$4,235 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding T & I TAYLOR, INC., Docket No. 2009-1118-MWD-E on April 15, 2010 assessing \$3,850 in administrative penalties with \$770 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Guardian Industries Corp., Docket No. 2009-1138-AIR-E on April 15, 2010 assessing \$59,696 in administrative penalties with \$11,939 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Lu Thi Pham, Docket No. 2009-1150-PST-E on April 15, 2010 assessing \$6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham A. Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kinder Morgan Liquids Terminals LLC, Docket No. 2009-1161-AIR-E on April 15, 2010 assessing \$13,480 in administrative penalties with \$2,696 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oxy USA WTP LP, Docket No. 2009-1204-AIR-E on April 15, 2010 assessing \$99,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Amrik Singh, Docket No. 2009-1226-PST-E on April 15, 2010 assessing \$5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham A. Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Roshani Enterprises, Inc. dba Buckner Service Center, Docket No. 2009-1246-PST-E on April 15, 2010 assessing \$4,070 in administrative penalties with \$814 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenneth Wayne Groda dba Eagle Irrigation, Docket No. 2009-1283-LII-E on April 15, 2010 assessing \$262 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Paul Toucedo, Docket No. 2009-1296-PST-E on April 15, 2010 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PILGRIM'S PRIDE CORPORATION, Docket No. 2009-1337-IWD-E on April 15, 2010 assessing \$43,700 in administrative penalties with \$8,740 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ni America Texas, LLC, Docket No. 2009-1354-PWS-E on April 15, 2010 assessing \$660 in administrative penalties with \$132 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding National Convenience Stores Incorporated dba Valero Corner Store 2553, Docket No. 2009-1368-PST-E on April 15, 2010 assessing \$6,221 in administrative penalties with \$1,244 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BEN CORPORATION dba Super K Food Mart, Docket No. 2009-1376-PST-E on April 15, 2010 assessing \$6,269 in administrative penalties with \$1,253 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Noltex L.L.C., Docket No. 2009-1425-AIR-E on April 15, 2010 assessing \$4,403 in administrative penalties with \$880 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STEPHENVILLE MOBILE HOME PARK, LTD, Docket No. 2009-1448-MWD-E on April 15, 2010 assessing \$3,909 in administrative penalties with \$781 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry J. Appelt dba Larry Service Station, Docket No. 2009-1454-PST-E on April 15, 2010 assessing \$26,798 in administrative penalties with \$5,359 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robroy Industries Texas, L.P., Docket No. 2009-1456-AIR-E on April 15, 2010 assessing \$26,250 in administrative penalties with \$5,250 deferred.

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 City of Asherton, Docket No. 2009-1464-MWD-E on April 15, 2010 assessing \$3,380 in administrative penalties with \$676 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Robinson, Docket No. 2009-1473-WQ-E on April 15, 2010 assessing \$5,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2009-1476-AIR-E on April 15, 2010 assessing \$21,415 in administrative penalties with \$4,283 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. Army Corps of Engineers, Docket No. 2009-1478-MWD-E on April 15, 2010 assessing \$1,200 in administrative penalties with \$240 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Webb County, Docket No. 2009-1512-SLG-E on April 15, 2010 assessing \$4,543 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHANGING SURFACE, INC., Docket No. 2009-1522-IHW-E on April 15, 2010 assessing \$9,000 in administrative penalties with \$1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2009-1524-AIR-E on April 15, 2010 assessing \$31,425 in administrative penalties with \$6,285 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Texas, Inc., Docket No. 2009-1533-PWS-E on April 15, 2010 assessing \$1,975 in administrative penalties with \$395 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Pacific Railroad Company, Docket No. 2009-1535-MLM-E on April 15, 2010 assessing \$7500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Darlene Chappell dba Big Red Barn, Docket No. 2009-1594-PST-E on April 15, 2010 assessing \$5,055 in administrative penalties with \$1,011 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PP & MB CORPORATION dba New Era Food Store, Docket No. 2009-1602-PST-E on April 15, 2010 assessing \$5,064 in administrative penalties with \$1,012 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ysmael Corral dba Precision Tile & Design, Docket No. 2009-1607-MSW-E on April 15, 2010 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Independence Woods, L.L.C., Docket No. 2009-1608-EAQ-E on April 15, 2010 assessing \$9,375 in administrative penalties with \$1875 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Uppal Bros., Inc. dba Save Way Food Mart, Docket No. 2009-1611-PST-E on April 15, 2010 assessing \$13,682 in administrative penalties with \$2,736 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chemical Lime, Ltd., Docket No. 2009-1635-AIR-E on April 15, 2010 assessing \$5,400 in administrative penalties with \$1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Samuel C. Mullin, Docket No. 2009-1662-OSS-E on April 15, 2010 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bayer MaterialScience LLC, Docket No. 2009-1666-AIR-E on April 15, 2010 assessing \$11,322 in administrative penalties with \$2,264 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Permian Tank & Manufacturing, Inc., Docket No. 2009-1669-AIR-E on April 15, 2010 assessing \$6,100 in administrative penalties with \$1,220 deferred.

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 Exxon Mobil Corporation, Docket No. 2009-1677-AIR-E on April 15, 2010 assessing \$40,000 in administrative penalties with \$8,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Creedmoor-Maha Water Supply Corporation, Docket No. 2009-1697-PWS-E on April 15, 2010 assessing \$545 in administrative penalties with \$109 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clarence Schley, Docket No. 2009-1725-MLM-E on April 15, 2010 assessing \$2,100 in administrative penalties with \$420 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2009-1737-AIR-E on April 15, 2010 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Port Terminal Railroad Association, Docket No. 2009-1740-MWD-E on April 15, 2010 assessing \$4,810 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIX KNASTARS, INC. dba Court Road Citgo, Docket No. 2009-1754-PST-E on April 15, 2010 assessing \$3,583 in administrative penalties with \$716 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Texarkana, Docket No. 2009-1770-MWD-E on April 15, 2010 assessing \$6,200 in administrative penalties with \$1,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BURLINGTON NORTHERN SANTA FE CORPORATION, Docket No. 2009-1786-PST-E on April 15, 2010 assessing \$4,277 in administrative penalties with \$855 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Orange County Water Control and Improvement District No. 1, Docket No. 2009-1793-MWD-E on April 15, 2010 assessing \$1,920 in administrative penalties with \$384 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ELG Metals, Inc., Docket No. 2009-1795-IWD-E on April 15, 2010 assessing \$3,640 in administrative penalties with \$728 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Groveton, Docket No. 2009-1799-MWD-E on April 15, 2010 assessing \$10,700 in administrative penalties with \$2,140 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paradise Ranch Landowners' Association, Inc., Docket No. 2009-1812-PWS-E on April 15, 2010 assessing \$475 in administrative penalties with \$95 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISP Synthetic Elastomers, LP, Docket No. 2009-1820-AIR-E on April 15, 2010 assessing \$10,450 in administrative penalties with \$2,090 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District No. 285, Docket No. 2009-1841-MWD-E on April 15, 2010 assessing \$950 in administrative penalties with \$190 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Clarendon, Docket No. 2009-1860-MSW-E on April 15, 2010 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512)

239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Austin Montessori School, Inc., Docket No. 2009-1893-EAQ-E on April 15, 2010 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Blackland Grain & Storage, Inc., Docket No. 2009-1998-AIR-E on April 15, 2010 assessing \$13,500 in administrative penalties with \$2,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J & J NRH 100 Family Limited Partnership, Docket No. 2009-2036-WQ-E on April 15, 2010 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Tommy Patterson, Docket No. 2009-1900-WOC-E on April 15, 2010 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Allen Loggins, Jr., Docket No. 2010-0015-WQ-E on April 15, 2010 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Williams & Thomas, LP, Docket No. 2010-0017-WQ-E on April 15, 2010 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201002074

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 28, 2010



Notice of Availability of the Draft April 2010 Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft April 2010 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information and total maximum daily load (TMDL) updates.

A copy of the draft April 2010 WQMP update may be found on the commission's Web site located at http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on June 7, 2010. For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at nvignali@tceq.state.tx.us.

TRD-201002047

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 27, 2010



Notice of Opportunity to Comment on Agreed 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 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 **June 7, 2010**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written 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 June 7, 2010**. 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 shall be submitted to the commission in **writing**.

(1) COMPANY: Arash the Archer Corporation dba Corner Food Store; DOCKET NUMBER: 2009-1350-PST-E; TCEQ ID NUMBER: RN102042728; LOCATION: 2402 West Main Street, League City, Galveston County; TYPE OF FACILITY: two underground storage tanks; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 36 months; PENALTY: \$3,663; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Paul Sims dba Rosebowl Regency Inn; DOCKET NUMBER: 2010-0212-PWS-E; TCEQ ID NUMBER: RN101196103; LOCATION: 2905 Highway 290 West, Brenham, Washington County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(1), by failing to maintain a thorough plant operations manual for operator review and reference; 30 TAC §290.46(n)(2), by failing to keep on file and make available for commission review an accurate up-to-date map of the distribution system so that valves and mains may be easily located during emergencies; 30 TAC §290.46(v), by failing to ensure that all the facility's electrical wiring is securely installed in compliance with local or national electrical code; and 30 TAC §290.46(q), by failing to issue a boil water notification within 24 hours using the prescribed notification format as specified in 30 TAC §290.47(e); PENALTY: \$607; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Paul Sims dba Rosebowl Regency Inn; DOCKET NUMBER: 2009-0472-PWS-E; TCEQ ID NUMBER: RN101196103; LOCATION: 2905 Highway 290 West, Brenham, Washington County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(d)(1)(C)(ii), by failing to measure the free chlorine residual within the distribution system with the diethyl-p-phenylenediamine colorimeter, spectrophotometer, or color comparator test kit; 30 TAC §290.41(c)(3)(O), by failing to enclose the well with an intruder-resistant fence or a locked ventilated well house to exclude possible contamination or damage to the facility by trespassers; and 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to compile and maintain records of water works operation and maintenance activities for operator reference and commission review; PENALTY: \$577; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Sonador Dairy, L.L.C.; DOCKET NUMBER: 2008-1630-AGR-E; TCEQ ID NUMBER: RN101526796; LOCATION: 453 Humphrey Lane, approximately 1.5 miles north of the intersection of Farm-to-Market (FM) Road 69 and Highway 11, on the west side of FM Road 69, Como, Hopkins County; TYPE OF FACILITY: dairy; RULES VIOLATED: 30 TAC §321.40(d) and Concentrated Animal Feeding Operation (CAFO) General Permit Number TXG920804, Part III.A.11(b)(1), by failing to prevent a discharge of irrigation tailwater runoff from Land Management Unit (LMU) Number 1; 30 TAC §321.46(a)(7)(A) and CAFO General Permit Number TXG920804, Part III.A.2.(a), by failing to update the site map to include berms, water wells, dead animal burial sites, silage

storage areas, and cooling ponds; 30 TAC §321.36(e)(1) and CAFO General Permit Number TXG920804, Part III, A.11.(e)(4), by failing to collect and analyze a sample of manure each year for total nitrogen, total phosphorus, and total potassium; 30 TAC §321.46(d)(8)(D) and CAFO General Permit Number TXG920804, Part IV, A.2.(b)(1)(iv), by failing to maintain updated records of the assumption for calculating the total amount of nitrogen and phosphorus applied per acre to each LMU at least monthly at the facility; 30 TAC §305.125(5) and §321.36(c), and CAFO General Permit Number TXG920804, Part V, D., by failing to maintain drainage areas and berms to prevent ponding or puddling and ensure that contaminated runoff is directed into retention control structures (RCS) Number 2 as designed; and 30 TAC §305.125(5) and CAFO General Permit Number TXG920804, Part III.A6(f)(3) and Part V.D., by failing to maintain the embankment wall of RCS Number 2 to prevent erosion or determination; PENALTY: \$5,875; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201002049

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 27, 2010



Notice of Opportunity to Comment on Default Order 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 Order (DO). 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 or requests a hearing and fails to participate at the hearing. 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 **June 7, 2010**. 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 that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the 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. Written 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 June 7, 2010**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DO and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: J. A. F. ENTERPRISE, INC. dba Cullen Chevron; DOCKET NUMBER: 2009-1851-PST-E; TCEQ ID NUMBER: RN101435238; LOCATION: 13306 Cullen Boulevard, Houston, Harris County; TYPE OF FACILITY: two underground storage tanks; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months; PENALTY: \$4,225; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201002050

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 27, 2010



Notice of Opportunity to Request a Public Meeting for a Municipal Solid Waste Liquid Waste Processing Facility Registration

Application Number 43026

APPLICATION. The City of Bryan, P.O. Box 1000, Bryan, Texas 77805, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration (No. 43026), to operate a Type V municipal solid waste liquid waste processing facility. The facility, Still Creek Liquid Waste Processing Facility is located within the permitted boundary of Still Creek Wastewater Treatment Plant, 2028 Quality Park Lane, approximately 1/3 mile west of the intersection of State Highway 21 and FM Road 2812, in the City of Bryan, 77805, in Brazos County. This facility is requesting authorization to continue processing liquid waste which includes municipal wastewater sludge, septage, portable toilet waste, food waste, Class II non-hazardous industrial liquid waste containing fats or oils, grit trap waste, and grease trap waste from restaurants and food service facilities. The registration application is available for viewing and copying at the Bryan Public Library, 201 E. 26th Street, Bryan, TX 77803, and may be viewed online at www.cook-joyce.com.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. Comments may also be received if a public meeting is held on the facility. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted prior to the notice of final determination. The executive director is not required to file a response to comments.

EXECUTIVE DIRECTOR ACTION. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to reconsider the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land owner-

ship map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

INFORMATION. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-30887 or electronically submitted to <http://www5.tceq.state.tx.us/ecmnts/index.cfm>. 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. Further information may also be obtained from the City of Bryan at the address stated above or by calling Mr. Bryan Dudley, P.E., Sr. Project Engineer, Cook-Joyce Inc., Engineering and Consulting at (512) 474-9097.

TRD-201001979

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 22, 2010



Notice of Water Quality Applications

The following notice was issued on April 9, 2010 through April 16, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF ROMA has applied for a renewal of TPDES Permit No. WQ0011212003, which authorizes the discharge of filter backwash wastewater from a water treatment plant at a daily average flow not to exceed 450,000 gallons per day. The facility is located at 102 Lincoln Street, approximately 1,300 feet northwest of the intersection of U.S. Highway 83 and U.S. Customs Toll Bridge Road (in the City of Roma), and approximately 1,100 feet north of the intersection of the same U.S. Customs Toll Bridge Road and the border of Mexico in Starr County, Texas 78584.

WISE COUNTY POWER COMPANY LLC which proposes to operate the Wise County Power Plant, has applied for a new permit, proposed Permit No. WQ0004897000, to authorize the discharge of brine concentrator/evaporator reject water at a daily average flow not to exceed 8,640 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal site are located at 800 Boons Creek Lane, Poolville, Texas 76487, approximately 7.6 miles northwest of Poolville on TX-199, Wise County, Texas 76487.

J L BATES LP which operates J.L. Bates Power Station, a steam electric power generation plant, has applied for a renewal of TPDES Permit No. WQ0001254000, which authorizes the discharge of cooling tower blowdown commingled with low volume waste, storm water runoff, and previously monitored effluent (metal cleaning wastes via Outfall 101) at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 001. The facility is located at 1708 Goodwin Road, Palmview, Texas, southwest of the intersection of Farm-to-Market Road 492 and U.S. Business 83 approximately four and one half miles west of the City of Mission, Hidalgo County, Texas 78572.

SANDY CREEK ENERGY ASSOCIATES LP which proposes to operate Sandy Creek Energy Station, has applied for a renewal of TPDES Permit No. WQ0004755000 which authorizes the discharge of cooling tower blowdown and previously monitored effluents (chemical metal cleaning waste, low volume waste, and coal pile runoff) at a daily average flow not to exceed 2,600,000 gallons per day via Outfall 001. The facility is located on an approximately 700-acre parcel of land in and near the City of Riesel, bounded by Rattlesnake Road on the west, north, and east sides, and Farm-to-Market Road 1860 on the south side, McLennan County, Texas 76682. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

LCY ELASTOMERS LP which operates LCY Elastomers, has applied for a major amendment to TPDES Permit No. WQ0004772000 to authorize an increase in the daily average flow and daily maximum flow limits at Outfall 002 to 240,000 gallons per day and 300,000 gallons per day, respectively; to revise the sampling point for Outfall 002; and to increase the effluent limits for several parameters at Outfall 002. The current permit authorizes the discharge of process area storm water, non-contact cooling water blowdown, steam condensate, water softener regenerate, condensate from the cyclohexane stripping section, washdown wastewater and other process wastewater at a daily average flow not to exceed 120,000 gallons per day via Outfall 002. The facility is located on the west side of Decker Drive, approximately 1,700 feet north of Baker Road and 1,600 feet south of Redell Road in Harris County, Texas 77520.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the permit WQ0004841000 issued to VAM USA, which operates VAM USA, a pipe threading and coating facility, to authorize: (1) correction of daily maximum effluent limitation for total nickel at Outfall 001 from 0.00044 mg/L to 0.0044 mg/L, (2) inclusion of reporting requirement for flow at Outfall 001, and (3) correction of sample type for dissolved oxygen at Outfall 001 from "composite" to "grab". The existing permit authorizes the discharge of treated domestic and process wastewater at a daily average flow not to exceed 20,000 gallons per day via Outfall 001. The facility is located one mile southwest of the intersection of US 90 and Sheldon Road, Harris County, Texas 77049.

CITY OF CLEBURNE has applied for a major amendment to TPDES Permit No. WQ0010006001 to authorize an extension of the temporary variance for Total Dissolved Solids, Chloride and Sulfate; and the discharge of treated domestic wastewater from Outfall 001 at an annual average flow not to exceed 7,500,000 gallons per day and from Outfall 002 at an annual average flow not to exceed 300,000 gallons per day. The facility is located on the north side of Buffalo Creek, approximately one mile southwest of the intersection of State Highway 174 and State Highway 171 in Johnson County, Texas 76031.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 15 has applied for a renewal of TPDES Permit No. WQ0011395001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 16705 Gleneagles Drive, approximately 5,000 feet north of Needham Road in Montgomery County, Texas 77301.

FIN & FEATHER RESORT LLC has applied for a renewal of TPDES Permit No. WQ0012143001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located on the shoreline of Toledo Bend Reservoir approximately 500 feet north of Farm-to-Market Road 2928 and 1.2 miles due north of Oakhill Cemetery in Sabine County, Texas 75948.

LAGUNA MADRE WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0014069001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The facility is located approximately 1,500 feet north of Farm-to-Market Road 510 and approximately 2.3 miles northwest of the intersection of Farm-to-Market Road 510 and State Highway 100 in Cameron County, Texas 78578.

EAST RIO HONDO WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014558001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day. The facility is located approximately 2.8 miles north of the intersection of Farm-to-Market Road 1561 and Brown Tract Road in Cameron County, Texas 78583.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201001980

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 22, 2010



Notice of Water Quality Applications

The following notice was issued on April 16, 2010 through April 23, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

OILTANKING HOUSTON LP which operates the Oiltanking Houston Terminal, a 'for hire' hydrocarbon and chemical product storage and transfer facility, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004898000 to authorize the discharge of boiler blowdown on an intermittent and flow variable basis via Outfall 003. The facility is located at 15631 Jacintoport Boulevard, approximately 1,500 feet east of the intersection of Jacintoport Boulevard with South Sheldon Road, within the City of Deer Park, Harris County, Texas 77015. The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF LLANO has applied for a major amendment to TCEQ Permit No. WQ0010209001, to authorize: modifications to the treatment process in the final phase; revision of the irrigation storage capacity from 90 acre-ft to 66.4 acre-ft; a reduction in the acreage use for irrigation disposal from 210 acres to 184 acres; and the relocation and expansion of the sludge beneficial land application site from 10 acres to 30 acres. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day via surface irrigation of non-public access agricultural land. The current permit authorizes the land application of sewage sludge for beneficial use. This permit will not authorize a discharge of pollutants into

waters in the State. The wastewater treatment facility and disposal site are located 350 feet south of the center line of the Llano River and approximately 1.05 miles north of State Highway 71, and 1.25 miles east of the Llano County Courthouse in Llano County, Texas 78643. The sludge disposal site is located adjacent to the treatment facility.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. WQ0014698001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 13,000 gallons per day. The facility is located in the center median of U.S. Highway 77, approximately 10 miles south of the Kenedy-Kleberg county line in Kenedy County, Texas 78385.

CITY OF MATHIS has applied for a renewal of TPDES Permit No. WQ0010015001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 947,000 gallons per day. The facility is located approximately 1.25 miles northwest of the intersection of State Highway Spur 198 and Farm-to-Market Road 1068, along the access road northwest extension of San Patricio Avenue in the City of Mathis in San Patricio County, Texas 78368.

CITY OF COLEMAN has applied for a renewal of TPDES Permit No. WQ0010150003, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 50,000 gallons per day. The facility is located on North Mississippi street, south of Peach street in Coleman County, Texas 76834.

CITY OF HAWKINS has applied for a renewal of TPDES Permit No. WQ0010439001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located 3,500 feet south-southeast of the intersection of United States Highway 80 and State Highway 14, approximately 1,000 feet west of the intersection of State Highway 14 and County Road 3300 in Wood County, Texas 75765.

CITY OF TRENTON has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0010704001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 105,000 gallons per day to a daily average flow not to exceed 165,000 gallons per day and to replace the existing contact stabilization plant with a complete mix nitrification plant. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 105,000 gallons per day. The facility is located approximately 2,900 feet southwest of the intersection of Farm-to-Market Road 815 and Farm-to-Market Road 814 in Fannin County, Texas 75490.

CITY OF MORGAN'S POINT RESORT has applied for a renewal of TPDES Permit No. WQ0010918002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The facility is located at 9 Helmsman Drive, Abstract 812 of S.P. Terry Survey, Lots 10, 11, 12, and 13 of Block 35 in the Morgan's Point Resort Subdivision in Bell County, Texas 76513.

CITY OF LYFORD has applied for a renewal of TPDES Permit No. WQ0011210001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 270,000 gallons per day. The facility is located east of Lyford, approximately 0.6 miles east and 0.6 miles south of the intersection of State Highway 448 and Farm-to-Market Road 1921 in Willacy County, Texas 78569.

LA JOYA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TCEQ Permit No. WQ0013523010, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day via non-public access low-pressure dosed drainfields with a minimum area of 5 acres. This permit will not authorize a discharge of pollutants into waters in the State. The

wastewater treatment facility and disposal site are located on the north side of Farm-to-Market Road 2221, 1.2 miles west of the intersection of Tom Gill Road and Farm-to-Market Road 2221 in Hidalgo County, Texas 78560.

AQUA UTILITIES INC has applied for a minor amendment to the TCEQ permit WQ0013994001 to authorize a permittee name change, a correction to the permitted final phase daily average flow from 0.616 million gallons per day (MGD) to 0.0616 MGD on Page 2 of the existing permit and change of the current Special Provision No. 16 that includes submittal of a nuisance odor prevention plan. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 61,600 gallons per day via surface irrigation of 64.52 acres of golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located within the Eagles Bluff Residential Development and Golf Course located on the east shore of Lake Palestine, 1.3 miles west of Farm-to-Market Road 346 and 1.2 miles south of Farm-to-Market Road 344 in Cherokee County, Texas 75757.

MIKE ODA has applied for a renewal of TPDES Permit No. WQ0014319001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 1020 Agnes Road, one mile north of the intersection of Agnes Road and Farm-to-Market Road 2759 and approximately 0.2 miles west on the Riverbend Park and Resort Road, in the City of Richmond in Fort Bend County, Texas 77469.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 19 has applied for a renewal of TPDES Permit No. WQ0014579001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 255,000 gallons per day. The facility will be located approximately 2,000 feet north of the intersection of Riverwood Drive and Quebec Boulevard and approximately 100 feet south of the Right-of-Way of the Brazos River in Fort Bend County, Texas 77471.

AUC GROUP, L.P. has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0014636001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 112,500 gallons per day. The facility will be located approximately one mile southeast of the intersection of Interstate Highway 10 and North Main Street in Harris County, Texas 77521.

SAMPOGNA PROPERTIES, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014966001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility will be located at 1525 Collins Road, Houston, in Harris County, Texas 77093.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201002075

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 28, 2010



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 19, 2010, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Eun Bok Lee D\B\A Lee's Chevron; SOAH Docket No. 582-09-5022; TCEQ Docket No. 2009-0052-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Eun Bok Lee D\B\A Lee's Chevron 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 Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201001982

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 22, 2010



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 Douglas at (512) 463-5780 or (800) 325-8506.

Deadline: Semiannual Report due January 18, 2005 for Candidates and Officeholders

Rick Melendrez, 3030 Altura Ave., El Paso, Texas 79930-3326

Deadline: Semiannual Report due July 15, 2005 for Candidates and Officeholders

Rick Melendrez, 3030 Altura Ave., El Paso, Texas 79930-3326

Deadline: Personal Financial Statement due February 16, 2010

Eric M. Brandt, 900 E. South St. #6, Kilgore, Texas 75662

Phillip K. Bryant, 9705 Malborough Dr., Austin, Texas 78735

Chuck Burnett, 5631 Holly Rd., Corpus Christi, Texas 78412

Joel De Los Santos, 501 Hidden Trc. Ave, Weslaco, Texas 78596

John B. Gordon, 1007 Green Meadow, Round Rock, Texas 78664

Christopher P. Hill, 701 Oak Grove Rd. E., Burleson, Texas 76028

Michael E. Holdman, 11421 Ware Seguin Rd., Schertz, Texas 78154

Nicholas LaHood, 1122 Via Milano, San Antonio, Texas 78260

David A. LeBlanc, 3654 Kingsman Dr., Houston, Texas 77082

Brian C. Mihelic, 134 Spring Lane, Rockport, Texas 78382

Todd Minor, 1518 Loch Lake Dr., El Lago, Texas 77586

Joe A. Montemayor, P.O. Box 3462, Crosby, Texas 77532

Rebecca Osborne, 12802 Modena Trail, Austin, Texas 78729

Nicholas A. Quezada, 1409 N. Zang Blvd. #616, Dallas, Texas 75203

Ronald E. Reynolds, 6140 Hwy 6 South #233, Missouri City, Texas 77459

Philip Snyder, 8102 Tavenor Lane, Houston, Texas 77075

Gary W. Waddell, 413 N. Terry St., Malakoff, Texas 75148

Deadline: Monthly Report due March 5, 2010

Mr. Aaron N. Slater, Rosenberg Police Officer's Association Political Action Committee, 1007 Aqua Vista Lane, Rosenberg, Texas 77469

TRD-201002061

David A. Reisman

Executive Director

Texas Ethics Commission

Filed: April 27, 2010

Notice of Proposed Reimbursement Rates

Proposed Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) proposes the following per diem reimbursement rates for Attendant Compensation Rate Enhancement Levels 1 through 25 for non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR). The public hearing notice was published in the April 23, 2010, issue of the *Texas Register* (35 TexReg 3315).

Reimbursement rates for Attendant Compensation Rate Enhancement Levels 1 through 25 are proposed to be effective September 1, 2010, as follows:



Texas Health and Human Services Commission

Per Diem Rates for Attendant Compensation Rate Enhancement Levels 1 through 25 for Non-state Operated ICF/MR Services

Participant Level	Additional Amount Added to Each Level	Total Enhancement Add-on for Each Level
Participant - Level 1	\$0.05	\$0.05
Participant - Level 2	\$0.05	\$0.10
Participant - Level 3	\$0.05	\$0.15
Participant - Level 4	\$0.05	\$0.20
Participant - Level 5	\$0.05	\$0.25
Participant - Level 6	\$0.05	\$0.30
Participant - Level 7	\$0.05	\$0.35
Participant - Level 8	\$0.05	\$0.40
Participant - Level 9	\$0.05	\$0.45
Participant - Level 10	\$0.05	\$0.50
Participant - Level 11	\$0.05	\$0.55
Participant - Level 12	\$0.05	\$0.60
Participant - Level 13	\$0.05	\$0.65
Participant - Level 14	\$0.05	\$0.70
Participant - Level 15	\$0.05	\$0.75
Participant - Level 16	\$0.05	\$0.80
Participant - Level 17	\$0.05	\$0.85
Participant - Level 18	\$0.05	\$0.90
Participant - Level 19	\$0.05	\$0.95
Participant - Level 20	\$0.05	\$1.00
Participant - Level 21	\$0.05	\$1.05
Participant - Level 22	\$0.05	\$1.10
Participant - Level 23	\$0.05	\$1.15
Participant - Level 24	\$0.05	\$1.20
Participant - Level 25	\$0.05	\$1.25

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodology at Texas Administrative Code (TAC) Title 1, Chapter 355, Subchapter A, §355.112, Attendant Compensation Rate Enhancement, as proposed to be amended. The proposed amendment of §355.112, which appeared in the March 26, 2010, issue of the *Texas Register* (35 TexReg 2396), updates the rule

to describe how attendant compensation rate enhancements are determined for the ICF/MR, HCS and TxHmL programs. These changes are being made in accordance with the General Appropriations Act (Article II, Health and Human Services Commission, S.B. 1, Rider 67, 81st Legislature, Regular Session, 2009), which authorized HHSC to discontinue fiscal accountability spending requirements contingent upon

the implementation of a rate enhancement system or other appropriate financial performance standards.

TRD-201002021

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 26, 2010



Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 24, 2010, at 9:00 a.m. to receive public comment on rates for the attendant compensation rate component for contracts not participating in the Attendant Compensation Rate Enhancement (the Enhancement) and the attendant compensation base rate for contracts participating in the Enhancement for Home and Community-based Services (HCS) supervised living/residential support services, day habilitation, supported home living, respite, and supported employment, and Texas Home Living (TxHmL) day habilitation, community supports, respite, supported employment, and employment assistance. The HCS and TxHmL programs are operated by the Department of Aging and Disability Services (DADS). The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Meisha Scott by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to adopt rates for the attendant compensation rate component for contracts not participating in the Attendant Compensation Rate Enhancement (the Enhancement) and the attendant compensation base rate for contracts participating in the Enhancement for HCS supervised living/residential support services, day habilitation, supported home living, respite, and supported employment, and TxHmL day habilitation, community supports, respite, supported employment, and employment assistance. The proposed rates will be effective September 1, 2010, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodology at Texas Administrative Code (TAC) Title 1, Chapter 355, Subchapter A, §355.112, Attendant Compensation Rate Enhancement, as proposed to be amended. The proposed amendment of §355.112, which appeared in the March 26, 2010, issue of the *Texas Register* (35 TexReg 2396), updates the rule to describe how attendant compensation rates for nonparticipating contracts and the attendant compensation base rate for participating contracts are determined for the ICF/MR, HCS and TxHmL programs. These changes are being made in accordance with the General Appropriations Act (Article II, Health and Human Services Commission, S.B. 1, Rider 67, 81st Legislature, Regular Session, 2009), which authorized HHSC to discontinue fiscal accountability spending requirements contingent upon the implementation of a rate enhancement system or other appropriate financial performance standards.

Briefing Package. A briefing package describing the proposed payment rates will be available on May 10, 2010. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Meisha Scott by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at meisha.scott@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Meisha Scott, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Meisha Scott at (512) 491-1998; or by e-mail to meisha.scott@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Meisha Scott, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201002023

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 26, 2010



Notice of Public Hearing on Proposed Reimbursement Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 24, 2010, at 9:00 a.m. to receive public comment on rates for the attendant compensation rate component for contracts not participating in the Attendant Compensation Rate Enhancement (the Enhancement) and the attendant compensation base rate for contracts participating in the Enhancement for non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) residential services and day habilitation services. The ICF/MR program is operated by the Department of Aging and Disability Services (DADS). The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Meisha Scott by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to adjust rates for the attendant compensation rate component for contracts not participating in the Attendant Compensation Rate Enhancement (the Enhancement) and the attendant compensation base rate for contracts participating in the Enhancement for non-state operated ICF/MR residential services and day habilitation services. The proposed rates were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification." The proposed rates, which will be effective September 1, 2010, are as follows.

Attendant Compensation Rate Components by Facility Size and Level of Need

	Day Habilitation Attendant Compensation	Residential Attendant Compensation
Small - intermittent	\$6.62	\$44.77
Small - limited	\$8.28	\$51.75
Small - extensive	\$11.01	\$63.33
Small - pervasive	\$16.55	\$85.89
Small - pervasive +	\$66.21	\$162.61
Medium - intermittent	\$6.62	\$34.55
Medium - limited	\$8.28	\$41.29
Medium - extensive	\$11.01	\$52.59
Medium - pervasive	\$16.55	\$62.98
Medium - pervasive +	\$66.21	\$160.59
Large - intermittent	\$6.56	\$24.37
Large - limited	\$8.20	\$27.61
Large - extensive	\$10.91	\$32.25
Large - pervasive	\$16.39	\$50.58
Large - pervasive +	\$65.58	\$148.55

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodology at Texas Administrative Code (TAC) Title 1, Chapter 355, Subchapter A, §355.112, Attendant Compensation Rate Enhancement, as proposed to be amended. The proposed amendment of §355.112, which appeared in the March 26, 2010, issue of the *Texas Register* (35 TexReg 2396), updates the rule to describe how attendant compensation rates for nonparticipating contracts and the attendant compensation base rate for participating contracts are determined for the ICF/MR, HCS and TxHmL programs. These changes are being made in accordance with the General Appropriations Act (Article II, Health and Human Services Commission, S.B. 1, Rider 67, 81st Legislature, Regular Session, 2009), which authorized HHSC to discontinue fiscal accountability spending requirements contingent upon the implementation of a rate enhancement system or other appropriate financial performance standards.

Briefing Package. A briefing package describing the proposed payment rates will be available on May 10, 2010. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Meisha Scott by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at meisha.scott@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Meisha Scott, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Meisha Scott at (512) 491-1998; or by e-mail to meisha.scott@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Meisha Scott, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201002022

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 26, 2010



Public Hearing Notice for Task Force on Strengthening Nonprofit Capacity

June 21, 2010

10:00 a.m. - 12:00 p.m.

Meeting Site:

El Paso Community College Administrative Services Center
Building A, Room A200
9050 Viscount Boulevard
El Paso, Texas

AGENDA

10:00 a.m. Call to Order and Opening Remarks

10:10 a.m. Presentation on Strengthening Nonprofit Capacity

10:30 a.m. Invited Testimony from The Public on Recommendations for Strengthening Nonprofit Capacity

12:00 p.m. Adjourn

Contact: Joanne Pierce, Office of Community Collaboration, Texas Health and Human Services Commission, 9013 Tuscany Way, Suite 100, Austin, Texas 78754, (512) 919-5746. Fax: (512)928-1828. Email: Joanne.Pierce@hhsc.state.tx.us.

Public Comment: Public Comment: Each member of the public will be allowed 3 minutes to provide testimony to the task force. Written

comments may be submitted in person at the public hearings or delivered via mail or e-mail. The deadline to submit written comment has been extended to 5:00 p.m., July 1, 2010. Written comments should be addressed to:

Joanne Pierce, Office of Community Collaboration
Texas Health and Human Services Commission
9013 Tuscany Way
Suite 100
Mail Code 1526
Austin, Texas 78754

This meeting is open to the general public. No reservations are required and there is no cost to attend this meeting.

People with disabilities who need auxiliary aids or services for this meeting are asked to call Michael Grisham at (512) 919-5742 at least 72 hours before the meeting.

TRD-201001983
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 22, 2010



**Public Hearing via Videoconference Draft 2011 - 2015
Coordinated Strategic Plan**

May 20, 2010

11:00 a.m.

Meeting Sites:

Brown-Heatly Building, Room 7230, 4900 N. Lamar Blvd., Austin
9310 Tuscany Way, Suite 100, Austin
John H. Winters Building, Classroom 1, 701 W. 51st St., Austin
6392 Iola Ave., Room 203, Lubbock
4601 S. First St., Room K 106, Abilene

801 W. Freeway, Lonestar Room, Grand Prairie

302 Rieck, Room 117, Tyler

285 Liberty, Room 1914, Beaumont

5425 Polk, Room 2 E/F, Houston

4616 W. Howard Ln., Room 119, Austin

11307 Roszell, Room 2001, San Antonio

401 E. Franklin, Room 485, El Paso

2520 S. Veterans Blvd., First Floor Conference Room, Edinburg

Welcome and Introductions - Thomas Suehs, Executive Commissioner for Health and Human Services in Texas

Review of Strategic Planning Process - Cynthia Putnam, Planning and Evaluation Manager, Strategic Decision Support

Public Comment - Executive Commissioner Tom Suehs

Adjourn

Contact: Laura Jordan, Health and Human Services Commission, (512) 424-6946 Laura.Jordan@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required and there is no cost to attend this meeting.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Jordan at (512) 424-6946 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201001991

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 22, 2010



Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Ametek Process and Analytical Instruments	L06291	Austin	00	03/31/2010
Throughout TX	Trident Imaging Services L.L.C.	L06312	League City	00	04/05/2010

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Arlington	Metroplex Hematology Oncology Associates dba Arlington Cancer Center	L03211	Arlington	86	04/09/2010
Austin	Austin Texas Radiation Oncology Group P.A. dba Austin Cancer Centers	L01761	Austin	61	03/30/2010
Austin	North Austin Surgery Center L.P.	L05832	Austin	03	04/06/2010
Austin	St. David's Healthcare Partnership L.P., L.L.P.	L00740	Austin	106	04/06/2010
Borger	Chevron Phillips Chemical Company L.P.	L05181	Borger	17	04/07/2010
Cypress	Houston Interventional Cardiology P.A.	L05470	Cypress	09	03/31/2010
Dallas	Mallinckrodt Inc.	L03580	Dallas	68	03/31/2010
Dallas	Methodist Hospitals of Dallas	L00659	Dallas	75	04/06/2010
Dallas	Texas Health Presbyterian Hospital - Dallas	L01586	Dallas	97	04/05/2010
Dallas	Cardinal Health	L05610	Dallas	17	03/31/2010
El Paso	East El Paso Physicians Medical Center L.L.C.	L05676	El Paso	19	03/31/2010
El Paso	East El Paso Physicians Medical Center L.L.C.	L05676	El Paso	20	04/07/2010
El Paso	Providence Memorial Hospital	L02353	El Paso	98	04/05/2010
El Paso	Tenet Hospitals Limited dba Sierra Providence East Medical Center	L06152	El Paso	08	04/05/2010
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L02365	El Paso	67	04/05/2010
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	75	03/31/2010
Houston	Hotwell U.S. Ltd.	L06145	Houston	07	03/31/2010
Houston	Houston Northwest Operating Company L.L.C. dba Houston Northwest Medical Center	L06190	Houston	07	03/31/2010
Houston	Memorial Hermann Hospital System Inc. dba Memorial Hermann Hospital	L00650	Houston	88	03/30/2010
Houston	Memorial Hermann Hospital System dba Memorial Hospital Memorial City	L01168	Houston	115	03/29/2010
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	152	03/29/2010
Houston	The Methodist Hospital	L00457	Houston	173	03/31/2010
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	11	04/07/2010
Houston	Cardinal Health	L05536	Houston	25	04/05/2010
Houston	Mallinckrodt Medical Inc.	L03008	Houston	82	04/09/2010
Houston	Baker Hughes Oilfield Operations Inc. dba Baker Atlas Houston Technology Center	L04452	Houston	49	04/07/2010
Humble	Memorial Hermann Hospital Systems dba Memorial Hermann Northwest	L02412	Humble	80	03/30/2010
Katy	Memorial Hermann Hospital System dba Memorial Hermann Katy Hospital	L03052	Katy	59	03/30/2010
Lewisville	Cardiovascular Specialists P.A.	L05507	Lewisville	16	04/05/2010
Lubbock	Texas Tech University	L01869	Lubbock	89	03/31/2010
Nocona	Nocona Hospital District dba Nocona General Hospital	L04977	Nocona	15	04/07/2010

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Pasadena	Goodyear Tire & Rubber Company	L04321	Pasadena	12	04/06/2010
Plano	Columbia Medical Center of Plano dba Medical Center of Plano	L02032	Plano	93	04/02/2010
Port Arthur	Christus Health Southeast Texas dba Christus Hospital St. Mary	L01212	Port Arthur	98	04/17/2010
Port Arthur	Total Petrochemicals USA Inc.	L03498	Port Arthur	27	04/05/2010
Round Rock	Scott and White Community Hospital Corp. dba Scott and White Healthcare-Round Rock	L06085	Round Rock	07	04/05/2010
San Antonio	Hector R. Villasenor M.D. P.A. dba Heart Institute of South Texas	L04377	San Antonio	26	03/29/2010
San Antonio	Metro North Cardiovascular Associates P.A. dba Metro North Clinic	L05235	San Antonio	18	04/01/2010
San Antonio	Heart Hospital of San Antonio L.P. dba Texsan Heart Hospital	L05722	San Antonio	14	03/31/2010
San Antonio	Heart Hospital of San Antonio L.P. dba Texsan Heart Hospital	L05722	San Antonio	15	04/07/2010
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	118	03/31/2010
San Antonio	VHS San Antonio Partners L.L.C.	L00455	San Antonio	196	04/02/2010
San Antonio	Medi-Physics Inc. dba G.E. Healthcare	L04764	San Antonio	39	04/06/2010
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	21	04/12/2010
Sugar Land	Memorial Hermann Healthcare System dba Memorial Hermann Sugarland Hospital	L03457	Sugar Land	34	03/30/2010
Temple	Specialty Pharmacy Services Inc.	L04883	Temple	28	04/05/2010
Temple	Scott and White Memorial Hospital and Scott Sherwood and Brindley Foundation dba Scott and White Memorial Hospital	L00331	Temple	84	04/05/2010
Texas City	CHCA Mainland L.P. dba Mainland Medical Center	L02577	Texas City	39	03/30/2010
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	77	03/31/2010
Throughout TX	RSI Inspection L.L.C.	L05624	Abilene	20	04/05/2010
Throughout TX	Desert Industrial X-Ray L.P.	L04590	Abilene	107	04/05/2010
Throughout TX	Desert Industrial X-Ray L.P.	L04590	Abilene	108	04/09/2010
Throughout TX	Frac Tech Services L.L.C.	L06188	Cisco	07	04/09/2010
Throughout TX	Pavetex Engineering and Testing Inc.	L05533	Dripping Springs	12	04/05/2010
Throughout TX	Cemex El Paso Inc.	L04021	El Paso	16	04/07/2010
Throughout TX	Asphalt Pavers Inc.	L05376	El Paso	04	04/12/2010
Throughout TX	Waggoner & Associates Inc. dba Waggoner-Texas Associates Inc.	L06159	Flint	13	04/01/2010
Throughout TX	H & H X-Ray Services Inc.	L02516	Flint	84	04/01/2010
Throughout TX	Gray Wireline Services Inc.	L03541	Fort Worth	34	04/01/2010
Throughout TX	Furgo Consultants Inc.	L05843	Fort Worth	08	04/08/2010
Throughout TX	General Inspection Services Inc.	L02319	Hempstead	46	04/06/2010
Throughout TX	HTS Inc. Consultants	L02757	Houston	18	03/30/2010
Throughout TX	Metco	L03018	Houston	208	04/01/2010
Throughout TX	Geoscience Engineering & Testing Inc.	L05180	Houston	08	04/06/2010
Throughout TX	Fugro Consultants Inc.	L00058	Houston	55	04/05/2010
Throughout TX	Mandes Inspection & Testing Services Inc.	L05220	Houston	68	04/02/2010
Throughout TX	Houston Refining L.P.	L00187	Houston	65	04/08/2010
Throughout TX	Oceaneering International Inc.	L04463	Ingleside	74	04/06/2010
Throughout TX	Applied Technical Services Inc.	L06282	Kemah	02	04/13/2010
Throughout TX	Marco Inspections Services L.L.C.	L06072	Kilgore	31	03/30/2010
Throughout TX	City of Lubbock	L01735	Lubbock	36	04/08/2010
Throughout TX	Techcorr USA L.L.C.	L05972	Palestine	75	04/06/2010

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	Texas Gamma Ray L.L.C.	L05561	Pasadena	93	03/31/2010
Throughout TX	U.S. Encology Texas Inc.	L06150	Robstown	02	04/01/2010
Throughout TX	U.S. Encology Texas Inc.	L05518	Robstown	08	04/05/2010
Throughout TX	PSI Wireline Inc.	L05911	San Angelo	05	04/06/2010
Throughout TX	Zachry Industrial Inc.	L01995	San Antonio	27	04/12/2010
Tyler	Sigal Heart Center	L05704	Tyler	05	04/06/2010
Weslaco	Knapp Medical Center	L03290	Weslaco	47	04/02/2010
Winnsboro	Mother Frances Hospital - Winnsboro	L03336	Winnsboro	24	03/31/2010

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Dimmitt	Castro County Hospital District dba Plains Memorial Hospital	L05043	Dimmitt	03	04/02/2010
Houston	Houston Northwest Radiotherapy Center	L02416	Houston	38	03/31/2010
Throughout TX	AEP Texas Central Company	L03043	Corpus Christi	11	04/07/2010
Throughout TX	Bureau Veritas North America Inc.	L03157	Fort Lauderdale	52	04/01/2010
Throughout TX	Granite Construction Company	L04923	Lewisville	16	04/08/2010

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, TX 78714-9347. For information call (512) 834-6688.

TRD-201002043
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: April 27, 2010



Notice of Amendment to Texas Schedules of Controlled Substances

This amendment to the Texas Schedules of Controlled Substances was signed by David L. Lakey, M.D., Commissioner of Health on March 13, 2010 and will become effective 21 days following the date of publication of this notice in the *Texas Register*.

The Deputy Administrator of the Drug Enforcement Administration (DEA) placed the substances, boldione (androsta-1,4-diene-3,17-dione), desoxymethyltestosterone (17[alpha]-methyl-5[alpha]-androst-2-en-17[beta]-ol; madol), and 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione) into Schedule III of the

United States Controlled Substance Act (USCSA) effective January 4, 2010. This final rule was published in the *Federal Register*, Volume 74, Number 232, pages 63603 - 63610. The Deputy Administrator of the DEA based this action on the following:

- (1) The substance is chemically related to testosterone;
- (2) the substance is pharmacologically related to testosterone;
- (3) the substance is not an estrogen, progestin, or a corticosteroid;
- (4) the substance is not dehydroepiandrosterone (DHEA); and
- (5) any substance that meets the criteria is considered an anabolic steroid and must be listed as a schedule III controlled substance.

Pursuant to §481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced action was published in the *Federal Register*; and, in his capacity as Commissioner of the Department of State Health Services, David L. Lakey, M.D. hereby orders that the substances boldione (androsta-1,4-diene-3,17-dione), desoxymethyltestosterone

(17[alpha]-methyl-5[alpha]-androst-2-en-17[beta]-ol; madol), and 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione) be added to Schedule III of the Texas Controlled Substances Act.

SCHEDULE III

Schedule III consists of:

Schedule III depressants * * *

Nalorphine

Schedule III narcotics * * *

Schedule III stimulants * * *

Schedule III anabolic steroids and hormones

Anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and include the following:

(1) androstenediol

(1-1) 3 beta,17 beta-dihydroxy-5 alpha-androstane;

(1-2) 3 alpha,17 beta-dihydroxy-5 alpha-androstane;

(2) androstenedione (5 alpha-androstan-3,17-dione);

(3) androstenediol--

(3-1) 1-androstenediol (3 beta,17 beta-dihydroxy-5 alpha-androst-1-ene);

(3-2) 1-androstenediol (3 alpha,17 beta-dihydroxy-5 alpha-androst-1-ene);

(3-3) 4-androstenediol (3 beta,17 beta-dihydroxy-androst-4-ene);

(3-4) 5-androstenediol (3 beta,17 beta-dihydroxy-androst-5-ene);

(4) androstenedione--

(4-1) 1-androstenedione ([5 alpha]-androst-1-en-3,17-dione);

(4-2) 4-androstenedione (androst-4-en-3,17-dione);

(4-3) 5-androstenedione (androst-5-en-3,17-dione);

(5) bolasterone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);

(6) boldenone (17 beta-hydroxyandrost-1,4,-diene-3-one);

*(7) boldione (androsta-1,4-diene-3,17-dione)

(8) calusterone (7 beta,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);

(9) clostebol (4-chloro-17 beta-hydroxyandrost-4-en-3-one);

(10) dehydrochloromethyltestosterone (4-chloro-17 beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);

(11) delta-1-dihydrotestosterone (a.k.a. '1-testosterone') (17 beta-hydroxy-5 alpha-androst-1-en-3-one);

*(12) desoxymethyltestosterone (17[alpha]-methyl-5[alpha]-androst-2-en-17[beta]-ol; madol)

(13) 4-dihydrotestosterone (17 beta-hydroxy-androstan-3-one);

(14) drostanolone (17 beta-hydroxy-2 alpha-methyl-5 alpha-androstan-3-one);

(15) ethylestrenol (17 alpha-ethyl-17 beta-hydroxyestr-4-ene);

(16) fluoxymesterone (9-fluoro-17 alpha-methyl-11 beta,17 beta-dihydroxyandrost-4-en-3-one);

(17) formebolone (2-formyl-17 alpha-methyl-11 alpha,17 beta-dihydroxyandrost-1,4-dien-3-one);

(18) furazabol (17 alpha-methyl-17 beta-hydroxyandrostano[2,3-c]-fuzazan);

(19) 13 beta-ethyl-17 beta-hydroxygon-4-en-3-one;

(20) 4-hydroxytestosterone (4,17 beta-dihydroxy-androst-4-en-3-one);

(21) 4-hydroxy-19-nortestosterone (4,17 beta-dihydroxy-estr-4-en-3-one);

(22) mestanolone (17 alpha-methyl-17 beta-hydroxy-5 alpha-androstan-3-one);

(23) mesterolone (1 alpha-methyl-17 beta-hydroxy-[5 alpha]-androstan-3-one);

(24) methandienone (17 alpha-methyl-17 beta-hydroxyandrost-1,4-dien-3-one);

(25) methandriol (17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-5-ene);

(26) methenolone (1-methyl-17 beta-hydroxy-5 alpha-androst-1-en-3-one);

(27) 17 alpha-methyl-3 beta, 17 beta-dihydroxy-5 alpha-androstane;

(28) 17alpha-methyl-3 alpha,17 beta-dihydroxy-5 alpha-androstane;

(29) 17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-4-ene;

(30) 17 alpha-methyl-4-hydroxynandrolone (17 alpha-methyl-4-hydroxy-17 beta-hydroxyestr-4-en-3-one);

(31) methyldienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9(10)-dien-3-one);

(32) methyltrienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9-11-trien-3-one);

(33) methyltestosterone (17 alpha-methyl-17 beta-hydroxyandrost-4-en-3-one);

(34) mibolerone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyestr-4-en-3-one);

(35) 17 alpha-methyl-delta-1-dihydrotestosterone (17 beta-hydroxy-17 alpha-methyl-5 alpha-androst-1-en-3-one) (a.k.a. '17-alpha-methyl-1-testosterone');

(36) nandrolone (17 beta-hydroxyestr-4-en-3-one);

(37) norandrostenediol--

(37-1) 19-nor-4-androstenediol (3 beta, 17 beta-dihydroxyestr-4-ene);

(37-2) 19-nor-4-androstenediol (3 alpha, 17 beta-dihydroxyestr-4-ene);

(37-3) 19-nor-5-androstenediol (3 beta, 17 beta-dihydroxyestr-5-ene);

(37-4) 19-nor-5-androstenediol (3 alpha, 17 beta-dihydroxyestr-5-ene);

(38) norandrostenedione--

(38-1) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

(38-2) 19-nor-5-androstenedione (estr-5-en-3,17-dione);

*(39) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione)

(40) norbolethone (13 beta,17alpha-diethyl-17 beta-hydroxygon-4-en-3-one);

- (41) norclostebol (4-chloro-17 beta-hydroxyestr-4-en-3-one);
- (42) norethandrolone (17 alpha-ethyl-17 beta-hydroxyestr-4-en-3-one);
- (43) normethandrolone (17 alpha-methyl-17 beta-hydroxyestr-4-en-3-one);
- (44) oxandrolone (17 alpha-methyl-17 beta-hydroxy-2-oxa-[5 alpha]-androstan-3-one);
- (45) oxymesterone (17 alpha-methyl-4,17 beta-dihydroxyandrost-4-en-3-one);
- (46) oxymetholone (17 alpha-methyl-2-hydroxymethylene-17 beta-hydroxy-[5 alpha]-androstan-3-one);
- (47) stanozolol (17 alpha-methyl-17 beta-hydroxy-[5 alpha]-androst-2-eno[3,2-c]-pyrazole);
- (48) stenbolone (17 beta-hydroxy-2-methyl-[5 alpha]-androst-1-en-3-one);
- (49) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
- (50) testosterone (17 beta-hydroxyandrost-4-en-3-one);
- (51) tetrahydrogestrinone (13 beta,17 alpha-diethyl-17 beta-hydroxygon-4,9,11-trien-3-one);
- (52) trenbolone (17 beta-hydroxyestr-4,9,11-trien-3-one); and
- (53) any salt, ester, or ether of a drug or substance described in this paragraph.

Schedule III hallucinogenic substances * * *

Changes to the Schedules are designated by a single asterisk (*) at the substance listing.

TRD-201002038

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: April 26, 2010



Texas Department of Housing and Community Affairs

Request for Applications - American Recovery and Reinvestment Act Weatherization Assistance Program

I. Background and Purpose of Request for Applications and American Recovery and Reinvestment Act Weatherization Assistance Program Funds.

The Texas Department of Housing and Community Affairs (the "Department") announces the release of a Request for Applications (RFA) for the American Recovery and Reinvestment Act Weatherization Assistance Program (ARRA WAP). The RFA is seeking to expand the Department's existing weatherization subrecipient network for the purposes of efficiently expending ARRA WAP funds.

The goal of the Department's Weatherization Assistance Program (WAP), funded by the U.S. Department of Energy, is to provide high quality, cost-effective weatherization services to income qualified households while ensuring the health and safety of the household occupants. Weatherization services improve the overall comfort, energy efficiency, and safety of homes. These services are provided free of charge to all qualifying households served by the program.

In 2009, the American Recovery and Reinvestment Act (ARRA) funded the WAP for Texas at a level of \$326,975,732. These funds have been allocated by the Department to an existing network of providers, being the same providers that administer WAP other than ARRA WAP and to eleven large Texas cities. These providers, including the existing network and the eleven cities, are referred to as "Subrecipients."

The Department is accepting Applications for additional statewide, regional, or local providers to serve as an overlay to the Department's existing ARRA WAP Subrecipient network. It is planned, that by increasing the number of providers, the Department may complete more weatherized units in Texas in a more effective and efficient manner, accommodating the increased demand that the program has experienced under the ARRA, and to provide support to Subrecipients in the network that would benefit from such support.

Through this RFA, the Department is seeking one or more entities that will implement a full subcontractor model to perform DOE WAP-compliant weatherization activities. The Department will work with the existing ARRA WAP network and any new Subrecipients awarded under this RFA to prioritize service in areas of the state that are most in need.

If you have questions regarding this RFA or the Application Workshop, please contact Sharon Gamble, Energy Assistance Section Manager, at sharon.gamble@tdhca.state.tx.us or (512) 475-0471.

II. RFA and Application Deadline.

The Department will accept applications in response to the ARRA WAP RFA beginning May 14, 2010 until November 1, 2010, or until the date the RFA is closed.

III. RFA Qualifications.

Applicants responding to this RFA must meet the qualifications outlined in the RFA, and as provided in U.S. Department of Energy regulations, be a unit of government or a non-profit organization, in order to be an eligible subrecipient of ARRA WAP funds.

IV. Proposed Contract Period.

The proposed contract period will vary, but in no case will a contract received through this RFA terminate later than March 31, 2012.

V. Application Availability.

The ARRA WAP RFA will be posted on the Department's website: <http://www.tdhca.state.tx.us/recovery/detail-wap.htm> and organizations on the Department's list serve will receive an e-mail notification that the RFA is available on the Department's web-site. Applications will be submitted to:

Mailing Address:

Ms. Sharon Gamble, Manager

Energy Assistance Section

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, Texas 78711-3941

ARRA WAP RFA Application Workshop.

May 7, 2010, 8:30 a.m. - 4:30 p.m., Austin, Texas, The Commons Center, JJ Pickle Research Campus, 10100 Burnet Road (off Mopac/Loop 1, exit Braker), building #137. Registration for the workshop is required. Attendance is mandatory before an application in response to the RFA may be submitted. The registration form for the Workshop may be found at: <http://www.tdhca.state.tx.us/recovery/detail-wap.htm>

Questions. Questions pertaining to the content of the ARRA WAP RFA may be directed to Sharon Gamble at (512) 475-0471 (Sharon.gamble@tdhca.state.tx.us).

TRD-201002055

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: April 27, 2010

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application to change the name of EMPLOYEES LIFE INSURANCE COMPANY to SWBC LIFE INSURANCE COMPANY, a domestic life company. The home office is in San Antonio, Texas.

Application for admission in the State of Texas by AMERICAN MINING INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Birmingham, Alabama.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201002070

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: April 28, 2010

◆ ◆ ◆
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 of NATIONAL CLAIMS PROFESSIONALS, INC., a domestic third party administrator. The home office is HOUSTON, TEXAS.

Application of ONE SOURCE VIRTUAL HR, INC., a domestic third party administrator. The home office is EULESS, TEXAS.

Application of HR&P, INC., a domestic third party administrator. The home office is HOUSTON, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-201002071

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: April 28, 2010

◆ ◆ ◆
Texas Lottery Commission

Instant Game Number 1273 "Match & Win™"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1273 is "MATCH & WIN™". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1273 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1273.

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 red play symbols are: 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, \$3.00, \$4.00, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200, \$400, \$1,000, \$2,000 and \$30,000. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, \$3.00, \$4.00, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200, \$400, \$1,000, \$2,000 and \$30,000.

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. 1273 - 1.2D

PLAY SYMBOL	CAPTION
11 (red)	
12 (red)	
13 (red)	
14 (red)	
15 (red)	
16 (red)	
17 (red)	
18 (red)	
19 (red)	
20 (red)	
31 (red)	
32 (red)	
33 (red)	
34 (red)	
35 (red)	
36 (red)	
37 (red)	
38 (red)	
39 (red)	
40 (red)	
51 (red)	
52 (red)	
53 (red)	
54 (red)	
55 (red)	
56 (red)	
57 (red)	
58 (red)	
59 (red)	
60 (red)	
71 (red)	
72 (red)	
73 (red)	
74 (red)	
75 (red)	
76 (red)	
77 (red)	
78 (red)	
79 (red)	
80 (red)	
1 (black)	
2 (black)	
3 (black)	
4 (black)	
5 (black)	
6 (black)	

7 (black)	
8 (black)	
9 (black)	
10 (black)	
21 (black)	
22 (black)	
23 (black)	
24 (black)	
25 (black)	
26 (black)	
27 (black)	
28 (black)	
29 (black)	
30 (black)	
41 (black)	
42 (black)	
43 (black)	
44 (black)	
45 (black)	
46 (black)	
47 (black)	
48 (black)	
49 (black)	
50 (black)	
61 (black)	
62 (black)	
63 (black)	
64 (black)	
65 (black)	
66 (black)	
67 (black)	
68 (black)	
69 (black)	
70 (black)	
\$3.00 (black)	THREE\$
\$4.00 (black)	FOUR\$
\$5.00 (black)	FIVE\$
\$10.00 (black)	TEN\$
\$20.00 (black)	TWENTY
\$30.00 (black)	THIRTY
\$50.00 (black)	FIFTY
\$100 (black)	ONE HUND
\$200 (black)	TWO HUND
\$400 (black)	FOR HUND
\$1,000 (black)	ONE THOU
\$2,000 (black)	TWO THOU
\$30,000 (black)	30 THOU
\$3.00 (red)	THREE\$
\$4.00 (red)	FOUR\$

\$5.00 (red)	FIVE\$
\$10.00 (red)	TEN\$
\$20.00 (red)	TWENTY
\$30.00 (red)	THIRTY
\$50.00 (red)	FIFTY
\$100 (red)	ONE HUND
\$200 (red)	TWO HUND
\$400 (red)	FOR HUND
\$1,000 (red)	ONE THOU
\$2,000 (red)	TWO THOU
\$30,000 (red)	30 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100, \$200, \$400 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$2,000 or \$30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1273), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1273-0000001-001.

K. Pack - A pack of "MATCH & WIN™" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MATCH & WIN™" Instant Game No. 1273 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 "MATCH & WIN™" Instant Game is determined once the latex on the ticket is scratched off to expose 68 (sixty-eight) Play Symbols. If a player matches all "BLACK NUMBERS" play symbols in a ROW with YOUR BLACK NUMBERS play symbols, the player wins that ROW's BLACK PRIZE. If a player matches all "RED

NUMBERS" play symbols in a ROW with YOUR RED NUMBERS play symbols, the player wins that ROW's RED PRIZE. If a player matches all 3 Numbers in a COLUMN with YOUR RED or BLACK NUMBERS play symbols, the player wins that COLUMN's Prize. 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 68 (sixty-eight) 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 68 (sixty-eight) 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 68 (sixty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 68 (sixty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. There will be no duplicate symbols in the YOUR RED NUMBERS section of the ticket.

C. There will be no duplicate symbols in the YOUR BLACK NUMBERS section of the ticket.

D. There will be no duplicate symbols in the Game Play Grid.

E. Only the GRID NUMBERS that can appear in a given column per the Column header will appear in that column on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. The prize symbols \$3, \$4, \$5, \$10, \$20, \$30, \$50, \$100, \$200 and \$400 can be used in any of the 14 possible prize spots on a ticket.

H. The prize symbols \$1,000, \$2,000 and \$30,000 can only be used in the 3 RED PRIZE spots or the 3 BLACK PRIZE spots on the right side of the ticket.

I. At least one \$2,000 and at least one \$30,000 prize symbol will appear on each ticket except when restricted by the prize structure and/or other parameters.

J. No more than 2 non-winning occurrences of a given prize symbol from the symbols \$2,000 or \$30,000 on a ticket.

K. No more than 4 non-winning occurrences of a given prize symbol from the symbols \$3, \$4, \$5, \$10, \$20, \$30, \$50, \$100, \$200, \$400 and \$1,000 on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "MATCH & WIN™" Instant Game prize of \$3.00, \$4.00, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200, \$400 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$30.00, \$50.00, \$100, \$200, \$400 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MATCH & WIN™" Instant Game prize of \$1,000, \$2,000 or \$30,000, 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 "MATCH & WIN™" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MATCH & WIN™" 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 "MATCH & WIN™" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available

in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1273. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1273 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	482,400	16.67
\$4	498,480	16.13
\$5	771,840	10.42
\$10	144,720	55.56
\$20	112,560	71.43
\$30	33,500	240.00
\$50	12,529	641.71
\$100	8,040	1,000.00
\$200	2,010	4,000.00
\$400	2,010	4,000.00
\$500	1,340	6,000.00
\$1,000	134	60,000.00
\$2,000	28	287,142.86
\$30,000	14	574,285.71

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.88. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1273

without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1273, 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-201002063
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 28, 2010

◆ ◆ ◆
Texas Department of Motor Vehicles

Public Notice - Deadline Extended for Public Comments

In the April 23, 2010, issue of the *Texas Register* (35 TexReg 3231), the Texas Department of Motor Vehicles proposed amendments to Chapter 215, Motor Vehicle Distribution, Subchapter I, Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings, §215.312, Discovery, §215.314, Cease and Desist Orders, and §215.315, Statutory Stays.

The deadline for receipt of comments on the proposed amendments was originally set for May 10, 2010. This notice is to extend the public comment period to 5:00 p.m. on **May 24, 2010**. Additional information may be obtained from Brett Bray, Texas Department of Motor Vehicles, Motor Vehicle Division, P.O. Box 2293, Austin, Texas 78768-2293.

TRD-201002011
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Filed: April 23, 2010

◆ ◆ ◆
North Central Texas Council of Governments

Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments (NCTCOG) publishes this notice of consultant contract award. The selected consultant will serve as the Qualified Environmental Professional (QEP) for the City of Dallas 1014 and 1100 Main Street Brownfield projects.

The consultant approved to serve as the QEP for these specific Brownfield projects is Ecology & Environment, Inc., 1412 Main Street, Suite 1500, Dallas, Texas 75202. The contract award is an amount not to exceed \$20,000.

TRD-201001976
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: April 21, 2010

◆ ◆ ◆
Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Land Donation

Las Palomas Wildlife Management Area, Taormina and Chapote Units - Hidalgo County

In a meeting on May 27, 2010, the Texas Parks and Wildlife Commission (the Commission) will consider accepting a land donation at the Taormina and Chapote Units of the Las Palomas Wildlife Man-

agement Areas. At this meeting; the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Purchase of Easement

Buescher State Park - Bastrop County

In a meeting on May 27, 2010, the Texas Parks and Wildlife Commission (the Commission) will consider purchasing a utility easement at Buescher State Park to facilitate a wastewater connection with the City of Smithville Municipal Service. At this meeting; the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Granting of Easement

Lake Mineral Wells Trailway - Parker County

In a meeting on May 27, 2010, the Texas Parks and Wildlife Commission (the Commission) will consider granting an easement on the Lake Mineral Wells Trailway to Parker County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

TRD-201002048
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: April 27, 2010

◆ ◆ ◆
Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 21, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Universal Cable Holdings, Inc., d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 38179 before the Public Utility Commission of Texas.

The requested amendment would expand the service area footprint to include Daingerfield, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin,

Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38179.

TRD-201002012

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 23, 2010



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 22, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Etan Industries, Inc. d/b/a CMA Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 38188 before the Public Utility Commission of Texas.

The requested amendment would expand the service area footprint to include La Grange, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38188.

TRD-201002013

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 23, 2010



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 23, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 38190 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include San Leanna, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38190.

TRD-201002056

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 27, 2010



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 23, 2010, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Edigen, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 38191.

Applicant intends to provide facilities-based and resold telecommunications services.

Applicant's requested SPCOA geographic area includes the exchanges currently served by AT&T Texas, Verizon Southwest, and CenturyLink (formerly, Sprint).

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 19, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38191.

TRD-201002039

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 26, 2010



Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on April 23, 2010, for waiver of denial by the Pooling Administrator (PA) of Verizon Business' request for assignment of two (2) thousand-blocks of numbers on behalf of its customer, Sysco Foods, in the Cypress rate center.

Docket Title and Number: Petition of Verizon Business for Waiver of Denial of Numbering Resources, Docket Number 38193.

The Application: Verizon Business submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because Verizon Business did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

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 (888) 782-8477 no later than May 18, 2010. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 38193.

TRD-201002058

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 27, 2010

◆ ◆ ◆
Railroad Commission of Texas

Request for Comments on Surface Mining and Reclamation
Division Forms

The Railroad Commission of Texas requests comments on proposed
Surface Mining and Reclamation Division forms, SMRD-3U, SMRD-

5U, SMRD-38U, and SMRD-39U, as part of proposed repeals, new
rules, and amendments in 16 TAC Chapter 11 (relating to Surface Min-
ing and Reclamation Division), published in this issue of the *Texas Reg-
ister*. The rulemaking proposal, pursuant to House Bill 3837, 80th Leg-
islature (2007), implements the Commission's expanded statutory au-
thority to regulate uranium exploration. The Commission is requesting
comments on the proposed rulemaking, as well as the proposed forms.

SMRD-3U, Application to Conduct Uranium Exploration Activities by
Drilling



RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

1701 N. CONGRESS

CAPITOL STATION - P.O. BOX 12967

AUSTIN, TEXAS 78711-2967

APPLICATION TO CONDUCT URANIUM EXPLORATION ACTIVITIES BY DRILLING

All items applicable to the type of application must be addressed. File in triplicate with the Director of the Surface Mining and Reclamation Division along with the appropriate application fees. (Refer to 16 TEXAS ADMINISTRATIVE CODE §§11.132, 11.133, and 11.134 for more information concerning this form.)

Application Type: New Permit Renewal Revision
Application Fees: [Refer to 16 TEXAS ADMINISTRATIVE CODE §11.136]: New/renewal: \$1.50 per acre plus \$50 for each exploration borehole drilled during 12-month permit term; Revision: \$1.50 per additional acre.

I. Applicant Name: _____
Physical Address: _____
(Street or P.O. Box)
Mailing Address: _____
(Street or P.O. Box)

(City) (State) (Zip Code) (Telephone)

II. Name of Applicant's On-site Representative: _____
Address: _____
(Street or P.O. Box)

(City) (State) (Zip Code) (Telephone)

III. Required Information For New and Renewal Applications (Responses may be provided as referenced attachments to this form.)

- A. A description of the geographic location, including the acreage of the proposed area of exploration. The name of the county(s) in which exploration activities are to be conducted must also be provided.
- B. A U.S. Geological Survey topographic map(s) (scale 1:24,000) in paper and digital format on which is shown the following: (1) proposed exploration area boundary with acreage stated to nearest acre; (2) land tracts within the permit area; (3) identification of those land tracts for which right-of-entry has been obtained to conduct exploration activities; and (4) the location of private and public water wells, including those identified by the Texas Water Development Board, interior to and within 1,000 feet of the proposed permit boundary.
- C. Provide the name, address and telephone number for the following:

- (1) each groundwater conservation district encompassing the area in which the exploration activities will occur;
- (2) the mayor and health authority of each municipality within 10 miles in all directions of the boundary of the area in which the exploration activities will occur;
- (3) the county judge and health authority of each county in which the exploration activities will occur;
- (4) each member of the Texas Legislature who represents the area in which the exploration activities will occur;
- (5) each landowner of record of the surface within the proposed exploration permit area, indexed to land tracts shown on the map provided in III.B. above; and
- (6) each owner of record of the mineral estate for which right of entry has been obtained to conduct exploration activities, indexed to land tracts shown on the map provided in III.B. above.

D. Provide the following information:

- (1) a description of the geology and hydrogeology for the proposed permit area, including cross-sections and maps;
- (2) a description of the exploration drilling method, including the depth of subsurface penetration and the estimated size of the surface disturbance;
- (3) an estimate of the number of exploration boreholes to be drilled during the permit term and the physical method for marking each borehole location for inspection;
- (4) a description of the proposed plugging and well construction methods. (Note: These methods must conform to the requirements in 16 TEXAS ADMINISTRATIVE CODE §11.138.)
- (5) an explanation of the proposed methods for disposing of cuttings produced by the drilling activity and protecting mud pits from rainfall runoff; and
- (6) a description of the proposed procedures for leveling any disturbance caused by the drilling activities. (Note: These procedures must conform to the requirements in 16 TEXAS ADMINISTRATIVE CODE §11.138.)

IV. Revision Applications (Refer to 16 TEXAS ADMINISTRATIVE CODE §11.133)

Provide a detailed description of the changes proposed to the exploration activities. Changes may include a revised operation plan or reclamation plan, or revised administrative information.

CERTIFICATION

I, (name) _____, (title) _____ state that I have knowledge of the facts set forth in this Application to Conduct Uranium Exploration Activities by Drilling and that same are true and correct to the best of my knowledge and belief. I further state that, to the best of my knowledge and belief, the project for which application is made will not in any way violate any law, rule, ordinance, or decree of any duly authorized governmental entity having jurisdiction.

Signature: _____

Title: _____

Date: _____

SMRD-5U, Application to Transfer a Uranium Exploration Permit



**RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION**

1701 N. CONGRESS

CAPITOL STATION - P.O. BOX 12967

AUSTIN, TEXAS 78711-2967

APPLICATION TO TRANSFER A URANIUM EXPLORATION PERMIT

All items must be addressed by permittee. File in triplicate with the Director of the Surface Mining and Reclamation Division. (Refer to 16 TEXAS ADMINISTRATIVE CODE §11.135.)

Permit No.: _____ Permittee: _____

I. Name of Transferee: _____

Transferee Physical Address: _____
(Street or P.O. Box)

Transferee Mailing Address: _____
(Street or P.O. Box)

(City) (State) (Zip Code) (Telephone)

II. Name of Transferee's On-site Representative: _____

Representative's Address: _____
(Street or P.O. Box)

(City) (State) (Zip Code) (Telephone)

III. Required Information

- a. A U.S. Geological Survey topographic map(s) (scale 1:24,000) provided in paper and digital format on which are identified the permit area proposed for transfer, including all tracts to be transferred for which the permittee has obtained right-of-entry for exploration activities. (Refer to 16 TEXAS ADMINISTRATIVE CODE §11.132(6)).
- b. A cased borehole report (Form SMRD-38U) or plugging report (Form SMRD-39U) from the permittee for each borehole drilled by the permittee that has not already been submitted, by which the permittee attests that all plugging and reclamation requirements have been met prior to application. (Refer to 16 TEXAS ADMINISTRATIVE CODE §11.139.)

CERTIFICATIONS

I, (name) _____, (title) _____, for the permittee, state that I have knowledge of the facts set forth herein and that same are true and correct to the best of my knowledge and belief.

Date: _____ Signature: _____

I, (name) _____, (title) _____, for the transferee, state that I have knowledge of the requirements of the permit for which application is made. I further state that, to the best of my knowledge and belief, this permit, upon transfer, will not in any way violate any law, rule, ordinance, or decree of any duly authorized governmental entity having jurisdiction.

Date: _____ Signature: _____



RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

1701 N. CONGRESS

CAPITOL STATION - P.O. BOX 12967

AUSTIN, TEXAS 78711-2967

Cased Exploration Well Completion Report
(Refer to 16 TEXAS ADMINISTRATIVE CODE §11.139)

Uranium Exploration Permit No. _____

Permittee: _____ Well name: _____

Person performing completion of well, if different from Permittee: _____

Drilling date: Start: _____ End: _____ Completion date: Start: _____ End: _____

Logging date: Start: _____ End: _____ TCEQ Registration/Permit No.: _____

Well Completion Information:

Location (State Plane coordinates) NAD27 or NAD83: N _____ E _____

Drilling depth: _____ ft Casing material/diameter: _____

Completion depth: _____ ft Screen type: _____

Borehole diameter: _____ in. Screened interval: _____ to _____ ft

Seal Information:

<u>Zone</u>	<u>Cement</u> (sacks)	<u>Water</u> (bbl)	<u>Bentonite</u> † (lb)	<u>Additives</u> † (lb)	<u>Slurry Volume</u> (bbl)	<u>Slurry Density</u> (lb/gal)
Annular seal*	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____
Surface seal	_____	_____	_____	_____	_____	_____
Topping of hole	_____	_____	_____	_____	_____	_____

* if more than three downhole annular seal zones are installed, attach additional page with relevant information

† if bentonite or other additives are approved, indicate amounts used

Surface Completion Information:

Ground elevation: _____ ft amsl Top-of-casing elevation: _____ ft amsl

Static water level: _____ ft (depth from top-of-casing) Date: _____

Well marking and protection measures: _____

CERTIFICATION

I, (name) _____, (title) _____, state that I have actual, personal knowledge of the facts set forth in this cased borehole completion report, and that same are true and correct to the best of my knowledge and belief. I further state that, to the best of my knowledge and belief, the reclamation, casing, and completion requirements as set forth in the Act, the rules, and in the provisions of the approved permit for this borehole have been satisfied.

I further certify that this borehole has been registered as Well No. _____ under the regulatory responsibility of the Texas Commission on Environmental Quality in Austin, Texas, or transferred to Permit No. _____, issued by and held under the regulatory responsibility of the Texas Commission on Environmental Quality in Austin, Texas, for use pursuant to that permit. The location of this cased exploration well is accurately reported in this document.

Signature: _____

Title: _____

Date: _____



RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

1701 N. CONGRESS

CAPITOL STATION - P.O. BOX 12967

AUSTIN, TEXAS 78711-2967

Borehole Plugging Report
(Refer to 16 TEXAS ADMINISTRATIVE CODE §11.139)

Uranium Exploration Permit No. _____

Permittee: _____ Hole identifier: _____

Person performing plugging of borehole, if different from Permittee: _____

Drilling date: Start: _____ End*: _____ Plugging date: Start: _____ End: _____

*End date is date that drill reaches total depth.

Logging date: Start: _____ End: _____

Plugging and Abandonment Information:

Location (State Plane coordinates) NAD27 or NAD83: N _____ E _____

Borehole total depth: _____ ft Borehole diameter: _____ in.

Cement Type: _____ Emplacement Method: _____

Additional information*: _____

*pertinent descriptive information: e.g., downhole manufactured plugs used; special conditions encountered, etc.

Seal Information:

<u>Zone</u>	<u>Cement</u> (sacks)	<u>Water</u> (bbl)	<u>Bentonite†</u> (lb)	<u>Additives†</u> (lb)	<u>Slurry Volume</u> (bbl)	<u>Slurry Density</u> (lb/gal)
Water-zone seal [#]	_____	_____	_____	_____	_____	_____
Downhole seal*	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____
Surface seal	_____	_____	_____	_____	_____	_____
Topping of hole	_____	_____	_____	_____	_____	_____

[#] if a single downhole seal is used, seal information may be included here and no additional information needed for downhole seal.

* if more than three downhole seals are installed, attach additional page with relevant information

† if bentonite or other additives are approved, indicate amounts used

Surface Reclamation:

Ground leveled: _____ Seeded: _____ Depth from surface to top of seal: _____ ft
Date Date

Plugged-hole marking method used: _____

CERTIFICATION

I, (name) _____, (title) _____, state that I have actual, personal knowledge of the facts set forth in this borehole plugging report, and that same are true and correct to the best of my knowledge and belief. I further state that, to the best of my knowledge and belief, the plugging and reclamation requirements as set forth in the Act, the rules, and in the provisions of the approved permit for this borehole have been satisfied.

Signature: _____

Title: _____

Date: _____

Comments on the proposed rulemaking or on the proposed forms included in this notice 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.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 5:00 p.m., Monday, June 7, 2010, and encourages all interested persons to submit comments no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call John Caudle at (512) 463-6900. The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

TRD-201001987
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: April 22, 2010



Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Services

The Aviation Division of the Texas Department of Transportation (TxDOT) intends to enter into one or two contracts with prime provider(s) pursuant to Government Code, Chapter 2254, Subchapter A, for geotechnical and quality assurance testing services and for resident project representation (RPR) for a five-year contract term.

TxDOT CSJ No.:10AVNSERV

Project Description and Work to be performed:

TxDOT Aviation Division intends to enter into one or two contracts with prime provider(s) to perform geotechnical investigation, quality assurance testing, and RPR services for various general aviation airport construction projects across the state. (The construction general contractor performing services on these projects must provide their own

independent quality control testing and is not a part of this proposal.) One or two prime providers will be offered a contract for geotechnical investigation, quality assurance testing and RPR services as one contract. The services will not be separated.

Projects requiring these services are typically designed by the Aviation Division and each usually have total construction costs of under \$500,000.00. There are generally about 20 of these projects that require testing services each year, and 10 requiring RPR services.

Testing services may include but are not limited to: asphaltic concrete, portland cement concrete, plant inspection and testing, soil exploration, and geotechnical testing.

RPR services include but are not limited to: attend conferences, review schedules, review submittals, review work, rejection of defective work, inspections and tests, maintain records, submit weekly progress reports, approve payments, and conduct wage rates interviews.

Contracted firm will be required to provide on-demand testing and RPR services with 12 to 24 hours advance notification throughout the state.

Selection Requirements:

The proposing firm must demonstrate that a professional engineer, registered in Texas, will sign and seal the work to be performed under the contract. The proposing firm must demonstrate a familiarity with Texas Department of Transportation and Federal Aviation Administration (FAA) materials and testing procedures.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. **FIRMS SHOULD NOT COMPLETE PAGE 5 "PROJECT DESIGN SCHEDULE" OF THE FORM AVN-550. THE WORK SCHEDULE WILL BE NEGOTIATED WITH THE SELECTED PROVIDER PER PROJECT AS ASSIGNED. FIRMS SHOULD SIMPLY OMIT THIS PAGE.** All

printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of six pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

There is no HUB/DBE goal for this project.

Selection Criteria:

TxDOT will evaluate proposals using the following criteria:

- 1) Project understanding and approach, including utilization of professional engineer services. 25 points.
- 2) Recent experience of the firm's project team with similar projects within the last five years. 25 points.
- 3) Ability to provide on-demand testing and RPR services in a timely manner. 25 points.
- 4) Ability to understand and meet FAA requirements for specified material testing and to provide competent RPR oversight. 25 points.

Contract Terms:

For each individual project, the selected firm will submit a proposed schedule and price for RPR services and/or testing based on the project materials quantities provided by the TxDOT Aviation Project Manager for approval. TxDOT Project Manager may add or delete specific testing requirements or RPR hours based on the complexity and/or budget constraints of each individual project.

Compensation for individual projects shall be based on costs for required tests that are commensurate with industry standards, plus travel expenses, and per diem when appropriate. On occasion, if mutually beneficial, a lump sum fee for a project may be allowed. A testing schedule and not-to-exceed fee shall be negotiated prior to commencement of services for any project. Compensation for RPR is an hourly rate. Such payment shall include all direct salary costs, indirect salary costs, fringe benefits, overhead, travel and subsistence, telephone and postage, field office expenses, printing and reproduction costs, any other payroll costs and profit.

Deadline:

Five unfolded copies of the Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than June 2, 2010, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it

necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager at 1-800-68-PILOT (74568). Please contact Bijan Jamalabad, PE, Director of Engineering, for technical questions at 1-800-68-PILOT (74568).

TRD-201002020

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 26, 2010



Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, June 15, 2010 at 10:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-2, Austin, Texas to receive public comments on the May Quarterly 2010 Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2008-2011. The STIP reflects the federally funded transportation projects in the FY 2008-2011 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.).

Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected transportation operators, to provide an opportunity for interested parties to participate in the development of the program, and further requires the TIP to be updated at least once every four years and approved by the MPO and the Governor or Governor's designee. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

In accordance with 43 TAC §15.8(d), a copy of the proposed May Quarterly 2010 Revisions to the FY 2008-2011 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on the department's website at:

www.txdot.gov

Persons wishing to review the May Quarterly 2010 Revisions to the FY 2008-2011 STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5033.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Monday, June 14, 2010, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either

orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2008-2011 STIP may be obtained from Lori Morel, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5033. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Monday, June 21, 2010 at 4:00 p.m.

TRD-201002052
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 27, 2010



Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.txdot.gov/public_involvement/hearings_meetings.

Or visit www.txdot.gov, click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PI-LOT.

TRD-201002051
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 27, 2010



Texas Water Development Board

Requests for Statements of Qualifications for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications leading to the possible award of contracts for research on the effects of natural and anthropogenic-influenced water quality on fresh groundwater quantities. Guidelines for Statements of Qualifica-

tions, which include an application form and more detailed research topic information, will be supplied by the TWDB upon request.

Description of Research Objectives

In support of more accurate water quantity assessments for use by regional water planning groups and groundwater conservation districts, the TWDB is requesting Statements of Qualifications for (1) research on the effects of natural water quality on fresh groundwater quantities and (2) research on the effects of anthropogenic-influenced water quality on groundwater quantities. TWDB expects separate Statements of Qualifications for each of the two research projects. Whereas Report 89-01, An Overview of Natural and Man-Affected Conditions, compiled by the Texas Water Commission in 1989 (<http://www.twdb.state.tx.us/publications/reports/GroundWaterReports/GWReports/TWC%20Report%2089-01/R89-01.pdf>) served as a seminal work describing the types and location of actual and potential chemical contamination, reports from these two projects are meant to update our knowledge and further enlighten us on the estimated effects of chemical contamination to fresh groundwater quantity.

Details on the research projects and project requirements are available from the TWDB website: http://www.twdb.state.tx.us/publications/requestforproposals/requestforproposals_index.asp. The TWDB website site includes (1) guidelines for the Statements of Qualifications, (2) copies of the attachments, (3) a list of Statement of Qualifications Review Criteria, and (4) Historically Underutilized Business (HUB) forms.

Research Objectives for the Effects of Natural Water Quality on Groundwater Quantity

Numerous chemical constituents - primarily inorganics including trace minerals that are mainly metals - are naturally occurring in Texas groundwater. Depending on the aquifer, one or more of these constituents, when present in large enough concentrations, either limit the use of groundwater or require treatment methods that add to the cost of providing water for whatever intended use. For example, the same geological features in the Hill Country Region of Texas that contribute to the scenic nature of the area also contribute to naturally occurring radioactive particles in several of the area's aquifers. The purpose of this research is to enumerate, locate, and discuss in detail all such naturally occurring and limiting chemical constituents that affect each of the major and minor (and other) aquifers in each regional water planning-groundwater management area subgroup and to evaluate the effects on the quantity of fresh groundwater. Each identified area of groundwater quantity impact will also include planning level estimates of treatment costs by regional water planning-groundwater management area subgroup.

Several contaminant constituents occur naturally and some are a result of anthropogenic activities. Because the estimation of quantity of affected water, including the concentration of the contaminant - which affects treatment cost - is the main objective of both research projects, to the extent possible, the contaminant constituent will be researched in one category or the other. However, several will have to be considered in both research projects. For example, chloride is both a natural contaminant and an anthropogenic contaminant associated with oil and gas production waste, or pumping induced salt water intrusion in coastal aquifers, or from hydrogeologic units containing saline waters, and should be considered by both research projects. Other such constituents include nitrate and perchlorate.

After an initial meeting with TWDB staff after the award of research grants, quarterly progress reports must be submitted to the TWDB outlining progress of the project. Project invoices cannot be processed without detailed description of the progress made in all tasks. Each of the project tasks must be described in detail consistent with the bud-

get description. We expect issues to be reported to the TWDB contract manager as they appear.

Project deliverables shall include:

1). DATA: Well and water quality data from the Texas Commission on Environmental Quality (TCEQ) Public Drinking Water Section in Excel spreadsheets and in scanned electronic images where possible, per TWDB formatting requirements, including associated well information and TWDB identification number (or sufficient information to assign TWDB identification numbers), for incorporation into the TWDB groundwater database:

A) The most recent inorganic water quality data (as determined by TWDB) collected for TCEQ requirements from all single-source, untreated, public supply wells ("raw" water sample analyses), of which approximately 1,000 currently exist.

B) Inorganic chemistry data (as determined by TWDB) from paper records required for each new well approved by the TCEQ as a public water supplier. (These data are also from raw water samples and presumably exist for the majority of all 20,000+ public supply wells.)

2). MAPS: Aquifer-wide maps and cross-sections of each major and minor aquifer in Texas will indicate areas in which fresh groundwater quantities are affected by inorganic dissolved constituents from the most recently collected data from the TWDB database, from public supply wells as described above in TCEQ database(s), and from the appropriate database(s) containing analyses from the U.S. Geological Survey National Water Quality Assessment (NAWQA) program; and, when possible, from the oldest, most reliable data to illustrate any changes in water quality over time, including, but not limited to, individual maps for each of the following constituents:

- * total dissolved solids (TDS),
- * radionuclides,
- * arsenic,
- * nitrate,
- * fluoride,
- * perchlorate,
- * chloride,
- * sulfate, and
- * iron.

Maps will illustrate extent of contamination with one map per contaminant per aquifer showing contoured contaminant concentration values with a special contour for the primary Maximum Contaminant Level (MCL) or secondary standard, if applicable.

3). DATABASE: An ESRI ArcGISTM 9.3 geodatabase will include all well data used in creation of maps and data dictionaries describing the content and design. Data will include TWDB state well identification for every site if possible, or master key ID field in the Public Water Supply Database/TCEQ database(s), or the U.S. Geological Survey NAWQA, or appropriate U.S. Geological Survey database(s); spatial location, well depth, aquifer formation code, TWDB aquifer identification code, water use, completion data, log information, owner information; and all water quality data including but not limited to contaminant concentration, date of collection, collection methods based on TWDB codes, lab, and appropriate STORET code and confidence intervals (for data not contained in the TWDB "waterqua" table). Metadata must follow the Federal Geographic Data Committee - Content Standard for Digital Geospatial Metadata (FGDC CSDGM) standards in Environ-

mental Systems Research Institute (ESRI) defined Extensible Markup Language (XML) format.

4). REPORT: Report will include executive summary; approach to assessment; issues; hydrogeologic setting and extent of contamination; assessment of groundwater quantities (based on the official boundaries of the aquifer as defined by the TWDB) that may be impacted; planning-level estimates of treatment costs by regional water planning-groundwater management area subgroup; recommendations; and an appendix containing a literature review in annotated bibliographic format (with hyperlinks, where possible) including copies of critical figures illustrating main conclusions in each article, report, or document. Report should be submitted as a draft for review and comment as well as a final version in hard copy and electronic versions in both Microsoft Word 2007 format and in Adobe Acrobat 8.0 PDF compatible format, along with any original graphics documents used in producing report figures.

In addition, we expect potential contractors to indicate their abilities in:

- * inorganic hydrogeochemistry,
- * processing large datasets,
- * organizing and documenting relational databases,
- * extraction and use of data from TWDB, TCEQ, and U.S. Geological Survey NAWQA databases,
- * producing high-quality reports and graphics, and
- * meeting deadlines.

A formal talk discussing the results shall be presented to TWDB staff at the end of the project. The Statements of Qualifications shall not be more than 15 pages in length (using Times Roman 12 font), excluding qualifications and experience of project staff and HUB plan.

Research Objectives for the Effects of Anthropogenic-influenced Water Quality on Groundwater Quantity

Many anthropogenic activities have already affected fresh groundwater quantities in the state and will continue to do so, but to what relative extent? Research on this subject should result in a categorization and assessment of types of anthropogenic contaminants, stressing those that currently affect fresh groundwater quality but also include potential effects in the future, that affect each of the major and minor (and other) aquifers in each regional water planning-groundwater management area subgroup and to evaluate the impacts on the quantity of fresh groundwater. Each identified area of groundwater quantity impact will also include planning-level estimates of treatment costs by regional water planning-groundwater management area subgroup.

After an initial meeting with TWDB staff after the award of research grant, quarterly progress reports must be submitted to the TWDB outlining progress of the project. Project invoices cannot be processed without detailed description of the progress made on specific tasks. Each of the project tasks must be described in detail consistent with the budget description. We expect issues to be reported to the TWDB contract manager as they appear.

Project deliverables shall include:

1). MAPS: Aquifer-wide maps and cross-sections of each major and minor aquifer in Texas indicating areas in which each type of anthropogenic-influenced water quality may affect fresh groundwater quantity based on information from all appropriate databases, including the TCEQ, RRC, NAWQA, and TWDB. Individual maps and cross-sections will illustrate areal distribution of types of anthropogenic-influenced water quality limiters, including, but not limited to each of the following source categories:

- * oil and gas activities including pipelines
- * mining activities
- * land disposal/application of waste materials
- * sewage and waste-water disposal systems and municipal sewage collection lines
- * leaks and spills
- * injection wells
- * agricultural practices (including feedlots, agricultural chemicals, infiltration of irrigation water)
- * Superfund, Corrective Action, Brownfield sites
- * large manufacturing, processing, or storage facilities using LNAPL and/or DNAPL
- * emerging contaminants of concern (e.g. pharmaceuticals, personal care products)
- * over-pumping, salt-water intrusion

2). DATABASE: An ESRI ArcGISTM 9.3 geodatabase that includes all well data used in creation of maps and data dictionaries describing the content and design. Data will include TWDB state well identification for every site if possible or master key ID field in the Public Water Supply Database/TCEQ database(s) or the U.S. Geological Survey NAWQA or appropriate U.S. Geological Survey database(s); spatial location, well depth, aquifer formation code, TWDB aquifer identification code, water use, completion data, log information, owner information; and all water quality data including but not limited to contaminant concentration, date of collection, collection methods based on TWDB codes, lab, and appropriate STORET code and confidence intervals (for data not contained in the TWDB "waterqua" table). Metadata following the Federal Geographic Data Committee - Content Standard for Digital Geospatial Metadata (FGDC CSDGM) standards in Environmental Systems Research Institute (ESRI) defined Extensible Markup Language (XML) format.

3). REPORT: Report will include executive summary, approach to assessments; issues; hydrogeologic setting, extent of contamination, and potential for migration; assessments of groundwater quantities (based on the official boundaries of the aquifer as defined by the TWDB) that may be impacted; planning-level estimates of treatment costs by regional water planning-groundwater management area subgroup; recommendations; and an Appendix containing a literature review in annotated bibliographic format (with hyperlinks, where possible) including copies of critical figures illustrating main conclusions in each article, report, or document. Report should be submitted as a draft for review and comment as well as a final version in hard copy and electronic versions in both Microsoft Word 2007 format and in Adobe Acrobat 8.0 PDF compatible format, along with any original graphics documents used in producing report figures.

In addition, we expect potential contractors to indicate their abilities in:

- * organic hydrogeochemistry and contaminant transport,
- * inorganic hydrogeochemistry,
- * processing large datasets,
- * organizing and documenting relational databases,

- * extraction and use of data from RRC, TCEQ, and other appropriate databases,
- * producing high-quality reports and graphics, and
- * meeting deadlines.

A formal talk discussing the results shall be presented to TWDB staff at the end of the project. The Statements of Qualifications shall not be more than 15 pages in length (using Times Roman 12 font), excluding qualifications and experience of project staff and HUB plan.

Description of Funding Consideration

Up to \$500,000 has been identified for water research assistance from the TWDB's Research and Planning Fund for the research for these two projects. For each of the proposed projects up to half (\$125,000) of the funds will be available from fiscal year (FY) 2010 funds prior to September 1, 2010, and the remainder after September 1, 2010, from FY 2011 projected funds.

Following the receipt and evaluation of all Statements of Qualifications, the TWDB may adjust the amount of funding initially authorized for water research. Oral presentations may be required as part of qualification review. However, invitation for oral presentation is not an indication of probable selection. Up to 100 percent funding may be provided to individual applicants; however, applicants are encouraged to contribute matching funds or services, and funding will not include reimbursement for indirect expenses incurred by political subdivisions of the state or other state and federal agencies. In the event that acceptable Statements of Qualifications are not submitted, the TWDB retains the right to not award funds for the contracts.

Deadline, Review Criteria, and Contact Person for Additional Information. Six double-sided copies of a complete Statement of Qualifications, including the required attachments, must be filed with the TWDB prior to 12:00 noon, June 3, 2010. Statements of Qualifications must be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701; or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231. Statements of Qualifications will be evaluated according to 31 Texas Administrative Code §355.5 and the Statements of Qualifications Review Criteria rating form included in the TWDB's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants must contact the TWDB to obtain these guidelines.

Requests for information, the TWDB's rules covering the Research and Planning Fund, detailed evaluation criteria, more detailed research topic information, and the guidelines may be directed to Mr. David Carter at the preceding address or by calling (512) 936-6079. All technical questions should be directed to Ms. Janie Hopkins at (512) 936-0841.

TRD-201002060
 Kenneth L. Petersen
 General Counsel
 Texas Water Development Board
 Filed: April 27, 2010



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 35 (2010) is cited as follows: 35 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 "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 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 at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)