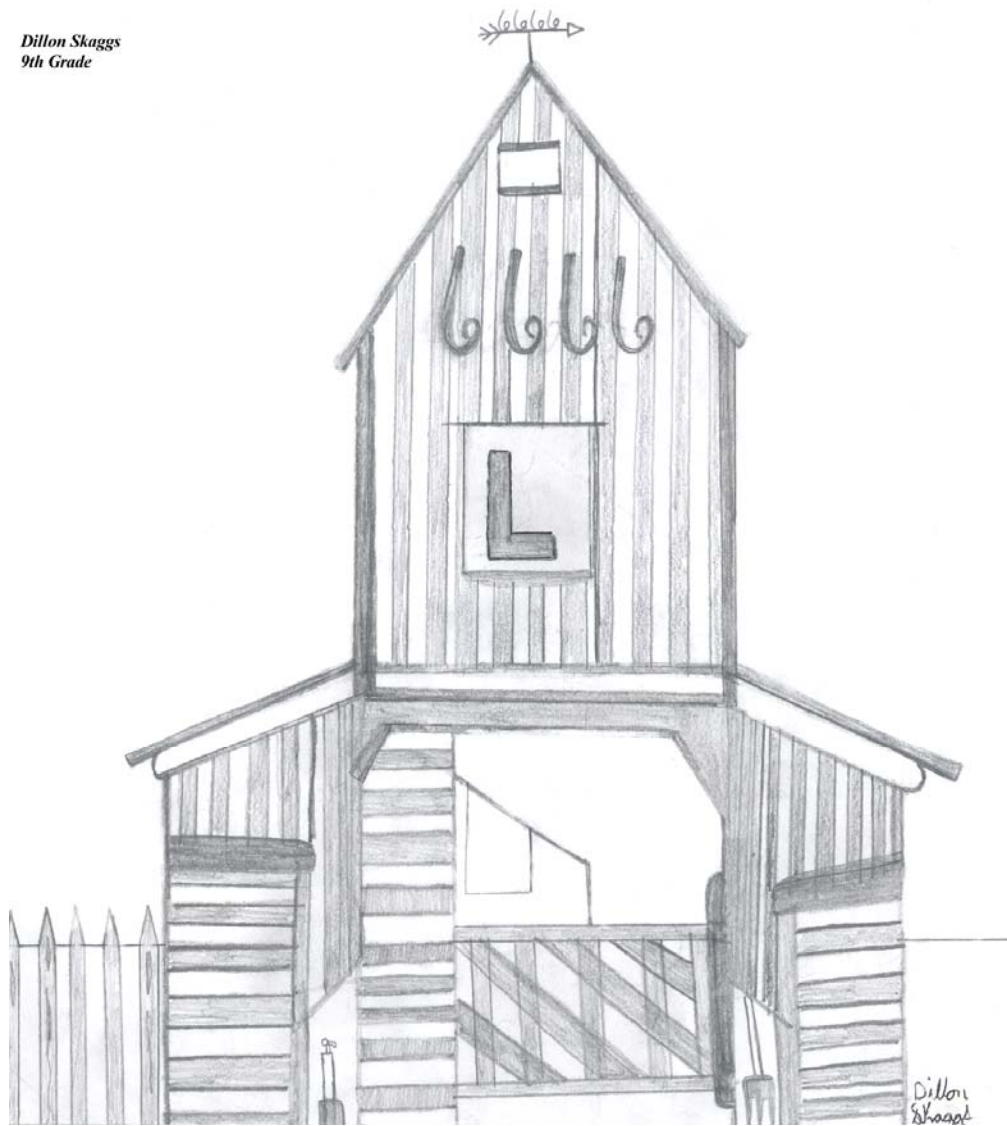

TEXAS REGISTER

Volume 35 Number 46

November 12, 2010

Pages 9959 – 10104

Dillon Skaggs
9th 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.

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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/open/index.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.texas.gov>

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

THE 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 Opinions

RQ-0926-GA

Requestor:

The Honorable Craig Eiland
Speaker Pro Tempore
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether a resort/conference center may operate a "card room" under particular circumstances (RQ-0926-GA)

Briefs requested by November 29, 2010

RQ-0927-GA

Requestor:

The Honorable D. Matt Bingham
Smith County Criminal District Attorney
Smith County Courthouse
100 North Broadway, 4th Floor
Tyler, Texas 75702

Re: Whether volunteer assistant fire marshals may be designated as "reserve deputies" (RQ-0927-GA)

Briefs requested by December 3, 2010

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

TRD-201006242

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: November 3, 2010

Opinion

Opinion No. GA-0813

The Honorable Yvonne Davis
Chair, Committee on Urban Affairs
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether parents may use the services of an advocate in dealing with matters of their child's education (RQ-0871-GA)

S U M M A R Y

A school district may not prohibit a parent from having an advocate as authorized by section 29.306 of the Education Code. Similarly, a school district may not prohibit a parent from inviting an individual with specialized knowledge or expertise to participate in a disabled child's individual education program pursuant to the Individuals with Disabilities Education Act.

To the extent the Legislature seeks to expressly permit or prohibit the involvement of an "advocate" in particular circumstances, other than those discussed herein, a legislative remedy may be necessary.

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

TRD-201006243

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: November 3, 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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 3. MEDICAID HOME HEALTH SERVICES

1 TAC §354.1040

The Texas Health and Human Services Commission (HHSC) proposes new §354.1040, concerning Requirements for Wheeled Mobility Systems, relating to Medicaid reimbursement for wheeled mobility systems.

Background and Justification

S.B. 1804, 81st Legislature, Regular Session, 2009, amends Human Resources Code, Chapter 32, by adding new §32.0424, which sets out requirements for Medicaid reimbursement for the provision of, or a major modification to, a wheeled mobility system. The new statute defines "qualified rehabilitation professional" (QRP) and "wheeled mobility system" (or "system"), identifying the QRP's roles and responsibilities. A QRP must be present at the delivery of the wheeled mobility system. The QRP also must have been present at and involved in any clinical assessment of the recipient that is required for reimbursement. In addition, at the delivery of the system, the QRP must be present for and direct a fitting to ensure that the system is appropriate for the recipient and verify that the system functions appropriately for the recipient. The proposed new rule implements Human Resources Code, §32.0424.

Section-by-Section Summary

New subsection (a) describes the purpose of the rule related to the requirements for wheeled mobility systems.

New subsection (b) defines "occupational therapist" (OT), "physical therapist" (PT), "qualified rehabilitation professional" (QRP), and "wheeled mobility system."

New subsection (c) describes the roles and responsibilities of the OT, PT, and QRP in the provision of, or the performance of a major modification to, a wheeled mobility system. New subsection (c)(1) and (2) specify that the OT or PT is responsible for completing the clinical assessment of a recipient required for obtaining a wheeled mobility system. New subsection (c)(3) specifies that the QRP is required to be present for and involved in

the clinical assessment of the recipient; direct the fitting of the wheeled mobility system; and verify that the wheeled mobility system functions relative to the recipient. New subsection (c)(4) explains that a licensed OT or PT who is also a certified QRP may perform either as the therapist or the QRP during the clinical assessment but cannot serve in both roles at the same time.

New subsection (d) defines the criteria for obtaining a wheeled mobility system as a Medicaid benefit.

New subsection (e) defines the documentation requirements for obtaining prior authorization for a wheeled mobility system.

New subsection (f) defines the requirements for reimbursement for the provision of a wheeled mobility system.

New subsection (g) defines the documentation requirements for consideration of reimbursement for a wheeled mobility system.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed new rule is in effect, there will not be a fiscal impact to state government.

Small and Micro-business Impact Analysis

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

Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the proposed new rule. The anticipated public benefit of enforcing the proposed new rule will be improved fitting and functionality of wheeled mobility systems for Medicaid-eligible recipients.

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Robert Perez, Senior Policy Analyst, Medicaid/CHIP Division, Health and Human Services Commission, at P.O. Box 85200, H390 Austin, Texas 78708-5200; by fax to (512) 249-3707; or by e-mail to robert.perez@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for December 2, 2010 from 10:00 a.m. to 11:00 a.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

Statutory Authority

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

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

§354.1040. Requirements for Wheeled Mobility Systems.

(a) Purpose. This rule details the requirements for receiving reimbursement for the provision of, or the performance of a major modification to, a wheeled mobility system. This rule implements §32.0424 of the Human Resources Code.

(b) Definitions. The following words and terms when used in this rule shall have the following meanings, unless the context clearly indicates otherwise.

(1) Occupational therapist (OT)--A person licensed by the Texas Board of Occupational Therapy Examiners to practice occupational therapy, as defined in §454.002(4), of the Texas Occupations Code (relating to Definitions).

(2) Physical therapist (PT)--A person licensed by the Texas Board of Physical Therapy Examiners to practice physical therapy, as defined in §354.1121 of this chapter (relating to Definitions).

(3) Qualified rehabilitation professional (QRP)--A person who holds one or more of the following certifications:

(A) Holds a certification as an assistive technology professional or a rehabilitation engineering technologist issued by, and in good standing with, the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA);

(B) Holds a certification as a seating and mobility specialist issued by, and in good standing with, RESNA; and/or

(C) Holds a certification as a certified rehabilitation technology supplier issued by, and in good standing with, the National Registry of Rehabilitation Technology Suppliers (NRRTS).

(4) Wheeled Mobility System--An item of durable medical equipment (DME) that is a customized powered or manual mobility device or a feature or component of the device, including the following:

- (A) Seated positioning components;
- (B) Powered or manual seating options;
- (C) Specialty driving controls;
- (D) Multiple adjustment frame;
- (E) Nonstandard performance options; and
- (F) Other complex or specialized components.

(c) Roles and responsibilities. The following persons, when referenced in this rule, shall have the following roles in the provision of, or the performance of a major modification to, a wheeled mobility system, unless the context clearly indicates otherwise.

(1) Occupational therapist (OT)--The occupational therapist is responsible for completing the clinical assessment of a recipient required for obtaining a wheeled mobility system. The assessment shall include detailed documentation of medical need for specific mobility or seating equipment and all necessary accessories.

(2) Physical therapist (PT)--The physical therapist is responsible for completing the clinical assessment of a recipient required for obtaining a wheeled mobility system. The assessment shall include detailed documentation of medical need for specific mobility or seating equipment and all necessary accessories.

(3) Qualified rehabilitation professional (QRP)--The QRP is required to:

(A) Be present for and involved in the clinical assessment of the recipient;

(B) Be present at the time of delivery of the wheeled mobility system to direct the fitting of the wheeled mobility system to ensure that the system is appropriate for the recipient; and

(C) Verify that the wheeled mobility system functions correctly relative to the recipient.

(4) A person that is licensed as an OT and/or a PT, and is also certified as a QRP, may perform either the role of the therapist or the QRP during the clinical assessment of the client, but cannot serve in both roles at the same time.

(d) Benefit. Wheeled mobility systems are a Medicaid benefit when the following criteria are met.

(1) All the requirements for DME, as detailed in §354.1039 of this chapter (relating to Home Health Services Benefits and Limitations) are met.

(2) Wheeled mobility systems are provided by an enrolled DME supplier that directly employs or contracts with a QRP.

(3) An enrolled DME supplier obtains prior authorization for wheeled mobility systems from the Texas Health and Human Services Commission (HHSC) or its designee.

(e) Prior authorization requirements. The following documentation must be submitted in a manner approved by HHSC or its designee to obtain prior authorization for a wheeled mobility system.

(1) A signed and dated physician's prescription, or other such documentation as directed by HHSC, that details a wheeled mobility system, including all necessary components, needed by the recipient;

(2) A clinical assessment that includes detailed documentation of medical need for specific mobility or seating equipment and all necessary accessories, signed and dated by an OT or PT authorized to perform the assessment;

(3) Documentation in a form or manner directed by HHSC or its designee attesting that a QRP was present for and involved in the clinical assessment of the recipient; and

(4) Any other documentation deemed necessary by HHSC or its designee to adequately explain the medical necessity of the requested equipment.

(f) Requirements for reimbursement. Reimbursement for the provision of, or the performance of a major modification to, a wheeled mobility system will be considered only when:

(1) The system is delivered to a recipient by a Medicaid-enrolled DME provider that directly employs or contracts with, a QRP, and the QRP was present and involved in the clinical assessment of the recipient for the requested wheeled mobility system;

(2) At the time the wheeled mobility system is delivered to the recipient, the QRP is present and responsible for:

(A) directing the fitting to ensure that the system is appropriate for the recipient; and

(B) verifying that the system functions correctly relative to the recipient.

(g) Documentation requirements for reimbursement. The following documentation must be submitted by the enrolled DME supplier with the claim for consideration of reimbursement for a wheeled mobility system in a manner approved by HHSC or its designee.

(1) A signed and dated HHSC DME Certification and Receipt Form as required in §354.1185 of this chapter (relating to Provider Compliance with Durable Medical Equipment (DME) Certification Requirements); and

(2) Documentation in a form and manner as directed by HHSC or its designee attesting that a QRP was present at the time of delivery and:

(A) directed the fitting of the wheeled mobility system to ensure that the system was appropriate for the recipient; and

(B) verified that the wheeled mobility system functions correctly relative to the recipient.

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

Filed with the Office of the Secretary of State on October 29, 2010.

TRD-201006151

Steve Aragon
Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: December 12, 2010

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



CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 3. PHYSICIAN SERVICES

1 TAC §355.8043

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8043, concerning Supplemental Payments for Physician Services, to add Texas A&M Health Science Center to the list of approved state entities that are eligible to receive physician supplemental payments.

Background and Justification

The proposed amendment allows HHSC to make supplemental payments to employed physicians at the Texas A&M Health Science Center.

The state funds required to draw down federal matching funds will be provided through intergovernmental transfers of public funds by the eligible governmental entities named in the rule.

HHSC will not make supplemental payments to any new hospital eligible under this rule amendment until the Medicaid state plan amendment has been approved by the Centers for Medicare and Medicaid Services.

Section-by-Section Summary

Amended subsection (c)(1) adds the word "state" to "-operated" for additional clarity.

New subsection (c)(1)(L) adds Texas A&M Health Science Center to the list of approved state entities that are eligible to receive physician supplemental payments.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect, there will be a fiscal impact to state government of \$1,060,955 all funds each year for state fiscal years (FY) 2011 through FY 2015. This increase is due to adding state-owned or state-operated physician group practices affiliated with Texas A&M Health Science Center.

The state portion of the estimated costs above will be provided through intergovernmental transfers from the Texas A&M Health Science Center.

Small and Micro-business Impact Analysis

Mrs. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as the proposal will affect only Texas A&M Health Science Center, which is not a "small business" or "micro-business" as defined by Texas Government Code §2006.001. There are no anticipated economic costs to persons who are required to comply with the proposed rule.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, determined that for the first five years the rule is in effect, the public benefit expected as a result of enforcing the proposed new rule is that state-owned or state-operated physician group practices affiliated with the Texas A&M Health Science Center will recover more of their costs of treating Medicaid patients.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Jill Seime, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1863; or by e-mail at Jill.Seime@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

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

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

§355.8043. Supplemental Payments for Physician Services.

(a) Introduction. Enrolled Medicaid providers that are identified in subsection (c) of this section may receive supplemental payments for physician services provided to Medicaid-eligible patients.

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

(1) Adjudicated claim--A fee-for-service physician claim for a covered Medicaid service that is paid or adjusted by HHSC.

(2) Approved place of service--A hospital-sponsored location, such as an inpatient hospital, outpatient hospital, hospital-based clinic, or hospital-affiliated clinic.

(3) Calculation period--The federal fiscal quarter determined by HHSC for which supplemental payment amounts are calculated.

(4) Facility setting--An inpatient or outpatient hospital.

(5) Global payment--The payment amount for a defined subset of services encompassing the combined technical and professional components rendered during an episode of care.

(6) Governmental hospital--A hospital or hospital system affiliated with a hospital district created under Health and Safety Code, Chapter 281.

(7) HHSC--The Texas Health and Human Services Commission or its designee.

(8) Medicaid Final Equivalent Units--Elements of measure used by HHSC to assign values to an individual physician service in the Medicaid program relative to the same individual physician service in the Medicare program. Medicaid Final Equivalent Units are deter-

mined using the methodologies described in subsection (f)(3) of this section and are a factor in calculating supplemental payment amounts.

(9) Medicare anesthesia base units--Elements of measure used by Medicare to assign values to anesthesia services with time-based fees. The base units are a factor used in calculating the Medicaid Final Equivalent Units.

(10) Medicare Fee Conversion Factor (MFCF)--A CMS-approved factor (145% of Medicare rates) used to convert the applicable Medicare fee to a fee that represents what commercial payors would reimburse physicians for eligible professional services.

(11) Nonfacility setting--A location other than an inpatient or outpatient hospital.

(12) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of the governmental entity that owns or is affiliated with the enrolled Medicaid provider identified in subsection (c) of this section. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds, such as the private operator of a hospital district's facility.

(c) Availability of supplemental payments. Supplemental payments are available under this section only for physician services performed by doctors of medicine and osteopathy licensed in Texas and affiliated with an enrolled Medicaid provider in one of the following ways:

(1) Employed by an eligible physician group practice that is state-owned or state-operated. Physicians under contract with such a physician group practice are not included in supplemental payment calculations. Eligible state-owned or state-operated physician group practices consist of those affiliated with:

- (A) University of Texas--Southwestern;
- (B) University of Texas--San Antonio;
- (C) University of Texas--Tyler;
- (D) University of Texas--Houston;
- (E) University of Texas Medical Branch--Galveston;
- (F) University of Texas--MD Anderson Cancer Center;
- (G) University of North Texas;
- (H) Texas Tech University--Amarillo;
- (I) Texas Tech University--El Paso;
- (J) Texas Tech University--Lubbock; ~~or~~
- (K) Texas Tech University--Odessa; ~~or~~
- (L) Texas A&M Health Science Center.

(2) Employed by a governmental hospital; or

(3) Employed by or under contract with a physician group practice organized by, under the control of, or under contract with a governmental hospital.

(d) Source of funds for supplemental payments. State funding for supplemental payments authorized under this section will be limited to public funds transferred to HHSC through intergovernmental transfers from the governmental entity that owns or is affiliated with the enrolled Medicaid provider identified in subsection (c) of this section.

(e) Required certification. Before a private physician practice group may receive supplemental payments under this section, the appropriate governmental entity and the private physician practice group must certify certain facts, representations, and assurances regarding program requirements.

(1) The appropriate governmental entity must certify, among other things, that all funds transferred to HHSC via intergovernmental transfer for use as the state share of supplemental payments are public funds.

(2) The appropriate governmental entity and the physician practice group must certify, among other things, that no part of any supplemental payment received under this section will be returned to the governmental entity that made the intergovernmental transfer.

(3) The physician practice group is eligible for supplemental payments for services provided beginning on the first day of the federal fiscal quarter after HHSC receives completed certification forms from the appropriate governmental entity and the private physician practice group, or as otherwise authorized by state and federal law.

(4) The physician practice group and the appropriate governmental entity must resubmit certification forms annually on or before September 30th unless the certification was executed during that federal fiscal year. The physician practice group and the appropriate governmental entity also must resubmit certification forms as otherwise requested by HHSC.

(f) Calculation of supplemental payments. For each enrolled Medicaid provider identified in subsection (c) of this section that is participating in this program, HHSC will calculate the supplemental payments for physicians' services under this section using the following methodology:

(1) HHSC will identify Medicaid claims adjudicated during the calculation period for services performed by eligible physicians at approved places of service.

(A) The identification of claims will be based on individual Current Procedural Terminology (CPT) codes contained in the Texas Medicaid Management Information System.

(B) Supplemental payments for physician services are available only for benefits covered by Medicare.

(2) HHSC will determine the appropriate Medicare fee schedule based on the following criteria:

(A) If more than 50 percent of the claims identified in the calculation period were performed in a nonfacility setting, HHSC will use the nonfacility Medicare physician fee schedule for that physician group.

(B) If 50 percent or more of the claims identified in the calculation period were performed in a facility setting, HHSC will use the facility Medicare physician fee schedule for that physician group.

(C) If a Medicare fee schedule is not available for a particular service, HHSC may use an alternative applicable Medicare fee schedule for those physician services.

(D) HHSC will use the Medicare fee schedule in effect at the time the supplemental payments are calculated.

(3) Using all eligible procedures identified in paragraph (1) of this subsection, HHSC will determine the Medicaid Final Equivalent Units in one of the following ways, depending on whether the CPT code is related or unrelated to anesthesia.

(A) Related to Anesthesia

(i) For each anesthesia CPT code and unique set of modifiers that is paid using a time-based fee, the Medicaid Final Equivalent Units are derived using the following formula: (number of occurrences of CPT code with modifiers x Medicare anesthesia base units) + the sum of the Medicaid paid units for that CPT code with modifiers;

(ii) For those limited anesthesia codes that are not paid using a time-based fee, the Medicaid Final Equivalent Units equal the sum of the Medicaid paid units for that CPT code with modifiers.

(B) Unrelated to Anesthesia. The Medicaid Final Equivalent Units equal the sum of the Medicaid paid units for that CPT code with modifiers.

(4) HHSC will calculate the Medicare Fee Equivalent Payment as follows:

(A) For anesthesia services with time-based fees, HHSC will multiply the Medicaid Final Equivalent Units, calculated under paragraph (3)(A)(i) of this subsection, by the Medicare anesthesia conversion factor assigned to the "Rest of Texas" locality by the Centers for Medicare and Medicaid (CMS). HHSC will not compensate for regional variations in practice costs.

(B) For all other services, HHSC will multiply the Medicaid Final Equivalent Units by the applicable Medicare fee.

(5) HHSC will reduce the Medicare Fee Equivalent Payment determined under paragraph (4) of this subsection by applying Medicaid pricing modifier reductions and assistant surgeon pricing adjustments in accordance with Texas Medicaid policy.

(6) HHSC will calculate the Payment Ceiling Amount by adding the Medicare Fee Equivalent Payments for all eligible CPT codes and multiplying the total by the Medicare Fee Conversion Factor of 145%.

(7) HHSC will calculate the supplemental payment amount by subtracting the Medicaid payments for all eligible CPT codes from the Payment Ceiling Amount.

(g) When a global payment that includes a technical component is made for physician services, supplemental payment is available only for the professional component and only when a doctor of medicine or doctor of osteopathy rendered those services.

(h) For each calculation period, physicians and physician groups must submit to HHSC requested documentation necessary to calculate supplemental payments. The documentation is due to HHSC by the deadlines established by HHSC. Failure to submit the requested documentation may result in forfeiture of supplemental payments for that calculation period.

(i) As a condition of participation, physicians, physician groups, and affiliated hospitals must submit to HHSC upon request in an accurate and timely fashion all documentation that HHSC deems necessary to support all internal and external reviews and audits of this supplemental payment program.

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

Filed with the Office of the Secretary of State on October 29, 2010.

TRD-201006118

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 12, 2010
For further information, please call: (512) 424-6900



DIVISION 14. FEDERALLY QUALIFIED HEALTH CENTER SERVICES

1 TAC §355.8261

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8261, concerning Federally Qualified Health Center Services Reimbursement, to update the Medicaid reimbursement methodology for Federally Qualified Health Centers (FQHCs).

Background and Justification

The proposed amendment will update the Medicaid reimbursement methodology for Federally Qualified Health Centers (FQHCs) by reducing the amount by which the Alternative Prospective Payment System (APPS) rate is annually increased from 1.5 percent to 0.5 percent to comply with a leadership directive. Currently, HHSC inflates the FQHC encounter rates each year by the Medicare Economic Index (MEI) plus an additional 1.5 percent. The Legislative Budget Board (LBB) and the Governor's Office informed HHSC in a letter dated May 17, 2010, of their revision to the mandated spending reduction plan for the 2010-11 biennium submitted by HHSC. The result of this revision is that the annual rate increase for FQHCs will be reduced from 1.5 percent to 0.5 percent effective January 1, 2011.

In addition, HHSC is removing the rule language that limits the use by HHSC to apply productivity screens in the determination of reasonable costs. Language was also added that an FQHC could appeal the use of the productivity screen if it could prove a reasonable justification for not meeting the standard. A productivity screen is a validity check used to ensure that professional staff working at the FQHC provide a reasonable amount of patient services so that its facility specific encounter rate reflects appropriate costs. Medicare uses this same methodology in setting rates for FQHC services.

Section-by-Section Summary

Proposed subsection (b)(2) removes the language that limits the use of productivity screens in the determination of reasonable costs. Language was added that allows the use of productivity screens to set Medicaid FQHC reimbursement rates in the same manner used by the Medicare program to set similar FQHC rates.

Proposed subsection (b)(4) removes language referring to a 1.5 percent annual rate increase for those providers that have chosen the APPS methodology and replaces it with a 0.5 percent annual increase.

Proposed subsection (b)(5)(C) adds language to satisfy a CMS requirement that each FQHC should select whether they chose to be reimbursed using the APPS or PPS reimbursement methodology when HHSC makes changes to the reimbursement methodology.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each of the first five years the amendment is in effect, there will be an all-funds savings of: \$717,421 (\$282,951 GR) for fiscal year (FY) 2011; \$1,104,111 (\$435,572 GR) for FY 2012; \$1,132,818 (\$446,897 GR) for FY 2013; \$1,162,271 (\$458,516 GR) for FY 2014; \$1,192,491 (\$470,438 GR) for FY 2015; and \$1,223,495 (\$482,669 GR) for FY 2016. Additionally, the proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. Texas Government Code §2006.001 defines both a "small business" and "micro-business" as a for-profit corporation. FQHC providers, however, are either public entities or non-profit corporations, as required under Section 330 of the Public Health Service Act. Thus, Chapter 2006 of the Texas Government Code does not apply to FQHCs. FQHC providers will continue to be reimbursed for their Medicaid services based upon the cost of providing those services.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the amendment is in effect, the anticipated public benefit, as a result of enforcing the section, will be to adopt a Medicaid reimbursement methodology rule for FQHCs that is in compliance with legislative directive and that includes an inflation rate that more accurately reflects the reasonable cost of providing services to Medicaid recipients. In addition, the use of Medicare productivity screens ensures the computation of fiscally accurate encounter rates.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Andrew Wolfe, by mail at HHSC Rate Analysis for Hospital Services, Mail Code H-400, P.O. Box 85200, Austin, Texas 78758, by fax to (512) 491-1998, or by e-mail to andrew.wolfe@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC

with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursement.

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

§355.8261. *Federally Qualified Health Center Services Reimbursement.*

(a) (No change.)

(b) Alternative Prospective Payment System (APPS) Methodology. FQHCs selecting the APPS methodology, in accordance with section 1902(bb) of the Social Security Act, as amended by the Benefits Improvement and Protection Act (BIPA) of 2000 (42 U.S.C. §1396a(bb)), effective for the FQHC's fiscal year that includes dates of service occurring January 1, 2001, and after, are reimbursed an APPS per visit encounter rate for Medicaid covered services at one hundred percent (100%) of reasonable costs. FQHCs are reimbursed a prospective per visit encounter rate for a visit that meets the requirements of subsections (b)(12) and (b)(13) of this section. The final base rate for each FQHC existing in 2000 was calculated based on one hundred percent (100%) of the average of the FQHC's reasonable costs for providing Medicaid covered services as determined from audited cost reports for the FQHC's 1999 and 2000 fiscal years. The final base rate was calculated by adding the total audited reimbursable costs as determined from the 1999 and 2000 cost reports and dividing by the total audited visits for these same two periods.

(1) (No change.)

(2) Reasonable costs, as used in setting the interim or final base rate or any subsequent effective rate, is defined as those costs that are allowable under Medicare Cost Principles, as outlined in 42 C.F.R. part 413, with ~~[no productivity screens and]~~ no per visit payment limit. HHSC will apply the same productivity screens used by the Medicare program in setting any interim rate or base rate or any subsequent effective rate. A provider can request a waiver of the application of the screens if it has demonstrated reasonable justification for not meeting the standard. Administrative costs will be limited to thirty percent (30%) of total costs in determining reasonable costs. Reasonable costs do not include unallowable costs.

(3) (No change.)

(4) The effective rate for APPS - The effective rate is the rate paid to the FQHC for the FQHC's fiscal year. The effective rate shall be updated by the rate of change in the MEI plus (0.5) [4.5] percent for each of the FQHC's fiscal years since the setting of its final base rate. If the increase in an FQHC's costs is greater than the MEI plus (0.5) [4.5] percent for APPS, an FQHC may request an adjustment of its effective rate as described in paragraph (6) of this subsection. The effective rate shall be calculated at the start of each FQHC's fiscal year and shall be applied prospectively for that fiscal year. The effective rate for PPS is described in subsection (a)(1) of this section.

(5) PPS and APPS reimbursement methodology selection is determined as follows:

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

(C) After a change to the reimbursement methodology the state may require the reselection of the APPS or PPS methodology following the requirements of subparagraph (A) of this paragraph.

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

(10) FQHC rate determination process.

(A) New FQHC.

(i) A new FQHC must file a projected cost report, pursuant to paragraph [subsection (b)] (8)(D) of this subsection, within 90 days of their designation as an FQHC to establish an initial interim base rate. The cost report must contain the FQHC's reasonable costs anticipated to be incurred during the FQHC's initial fiscal year. The initial interim base rate for a new FQHC shall be set at eighty percent (80%) of the anticipated reasonable costs.

(ii) - (iii) (No change.)

(B) - (F) (No change.)

(11) - (13) (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 November 1, 2010.

TRD-201006163

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: December 12, 2010

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



DIVISION 28. PHARMACY SERVICES: REIMBURSEMENT

1 TAC §355.8551

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8551, concerning Reimbursement Methodology for Pharmacy Health Services, related to Medicaid pharmacy dispensing fees.

Background and Justification

HHSC submitted a spending reduction plan in response to a letter dated January 15, 2010, from the Governor, Lieutenant Governor, and Speaker of the House. The letter requested the agency to submit a spending reduction proposal for the 2010-2011 biennium. The Legislative Budget Board and the Governor's Office informed HHSC in a letter dated May 17, 2010, of their revisions to the spending reduction plan for the 2010-11 biennium submitted by HHSC.

One result of the revised spending reduction plan is that the fixed and variable components of the Medicaid pharmacy dispensing fee reimbursement will be reduced by one percent effective September 1, 2010. The specific amounts of reimbursement for those components are set out in §355.8551, and therefore the rule must be amended to reflect the one-percent reduction.

HHSC also is re-proposing the language in new subsection (a)(5)(A) regarding the delivery incentive component of the dispensing fee formula. This is done as a consequence of a

court decision in *Long Term Care Pharm. Alliance, Omnicare, Inc., and Pharmerica, Inc. v. HHSC*, 249 S.W.3d. 471 (Tex. Ct. App., 11th Dist. 2007).

In addition, some terms used in the dispensing fee formula are being revised to make them more descriptive. Other non-substantive changes are made throughout the rule for clarity.

Section-by-Section Summary

Amended subsection (a) revises the opening paragraph to become subsection (a) and revises the terms used in the dispensing fee formula. The term "Estimated Dispensing Expense" is changed to "Fixed Component"; the term "Inventory Management Factor" is changed to "Variable Component"; and the term "Delivery Fee" is changed to "Delivery Incentive." The Preferred Generic Incentive component is added to the formula to make the formula more comprehensive.

Amended subsection (a)(2) replaces the term "estimated dispensing expense" with "fixed component" and updates the amount from \$7.50 to \$7.43.

Amended subsection (a)(4) replaces the term "inventory management factor" with "variable component" and updates the amount from 2.0% to 1.98%.

Amended subsection (a)(5)(A) is being re-proposed as a consequence of the court decision cited above. It describes the delivery incentive component of the dispensing fee formula and the conditions for payment of the incentive. This subsection includes non-substantive changes from the previous version.

Amended subsection (a)(5)(B) clarifies the term "preferred generic incentive" and removes the reference to §354.1924, which relates to the Preferred Drug List (PDL). This is done to avoid an incorrect rule reference in the event the section number for that rule changes in the future.

Amended subsection (a)(6) is renumbered in order to clarify that the \$200 limit per prescription applies to the total dispensing fee including any applicable delivery incentive and preferred generic incentive.

Former paragraph (7) is re-numbered to be subsection (b).

Other non-substantive changes are made throughout the rule for clarity.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five years the proposed rule is in effect there will be a savings to state government of (\$1,240,735) general revenue, (\$3,448,403) all funds for fiscal year (FY) 2011, (\$1,395,576) general revenue, (\$3,538,061) all funds for FY 2012, (\$1,432,055) general revenue, (\$3,630,051) all funds for FY 2013, (\$1,469,298) general revenue, (\$3,724,432) all funds for FY 2014, (\$1,507,490) general revenue, (\$3,821,268) all funds for FY 2015, and (\$1,546,685) general revenue, (\$3,920,621) all funds for FY 2016 as a result of the reduced rate. This fiscal impact captures the savings to state government beginning September 1, 2010, when the rate change went into effect. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. Providers will not be required to alter their business practices as a result of the rule. There are no significant other costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from the adoption of this rule by having a rule that follows State leadership's guidance as outlined in their revision to the HHSC spending reduction plan for the 2010-11 biennium. The public will benefit also from having a rule that better describes current rate determination practices.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Dan Huggins, Director of Acute Care Services, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to Dan.Huggins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

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

The rate reduction associated with this rule change was made effective September 1, 2010, pursuant to Texas Government Code §531.021 and 1 Texas Administrative Code §355.201, which require HHSC to set rates based on available levels of appropriated funds.

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

§355.8551. *Dispensing Fee.*

(a) The Texas Health and Human Services Commission (Commission) reimburses contracted Medicaid pharmacy providers according to the dispensing fee formula defined in this section. The dispensing fee is determined by the following formula: $\text{Dispensing Fee} = \frac{\text{Estimated Drug Ingredient Cost} + \text{Fixed Component} [\text{Estimated Dispensing Expense}]}{(1 - \text{Variable Component} [\text{Inventory Management Factor}])} - \text{Estimated Drug Ingredient Cost} + \text{Delivery Incentive} [\text{Fee}] + \text{Preferred Generic Incentive}$, where:

(1) The estimated drug ingredient costs are defined in §355.8541 of this title (relating to Legend and Non-legend Medication) and §355.8545 of this title (relating to Texas Maximum Allowable Cost).

(2) The fixed component [estimated dispensing expense] is \$7.43 [~~\$7.50~~].

(3) The inflation adjustment will be made, subject to the availability of appropriated funds, on the first day of the biennium. The projected rate of inflation shall be based upon a forecast of the Personal Consumption Expenditures (PCE) chain-type price index as the general cost inflation index. HHSC uses the lowest feasible PCE forecast consistent with the forecasts of nationally recognized sources available to HHSC at the time proposed reimbursement is prepared for public dissemination and comment.

(4) The variable component [inventory management factor] is 1.98% [~~2.0%~~].

~~[(5) The total dispensing fee shall not exceed \$200 per prescription.]~~

(5) ~~[(6)]~~ Add-on amounts.

(A) Delivery Incentive. A delivery incentive shall be paid, subject to the availability of appropriated funds, to approved providers who certify in a form prescribed by the Commission that the delivery services meet minimum conditions for payment of the incentive. These conditions include: making deliveries to individuals rather than just to institutions, such as nursing homes; offering no-charge prescription delivery to all Medicaid recipients requesting delivery in the same manner as to the general public; and publicly displaying the availability of prescription delivery services at no charge. The delivery incentive is \$0.15 per prescription and is to be paid on all delivered Medicaid prescriptions filled for legend drugs. This delivery incentive is not to be paid for over-the-counter drugs that are prescribed as a benefit of this program. ~~[A delivery incentive shall be paid, subject to the availability of appropriated funds; to approved providers who certify in a form prescribed by the Commission that the delivery services meet minimum conditions for payment of the incentive. These conditions include: making deliveries to individuals rather than just to institutions, such as nursing homes; offering no-charge prescription delivery to all Medicaid recipients requesting delivery in the same manner as to the general public; and, publicly displaying the availability of prescription delivery services at no charge. The delivery incentive is \$.15 per prescription and is to be paid on all Medicaid prescriptions filled for legend drugs. This delivery incentive is not to be paid for over-the-counter drugs, which are prescribed as a benefit of this program.]~~

(B) Preferred Generic Incentive. A preferred generic drug dispensing incentive of \$0.50 per prescription will be paid on all Medicaid prescriptions filled for preferred generic drugs for which a manufacturer has agreed to pay a supplemental rebate. Preferred generic drugs are subject to the Preferred Drug List (PDL) requirements; as described in §354.1924 of this title].

(6) The total dispensing fee shall not exceed \$200 per prescription.

(b) ~~[(7)]~~ Notwithstanding other provisions of this section, the Commission may adjust the dispensing fee to address budgetary constraints in accordance with the provisions of ~~[+ TAC] §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).~~

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

Filed with the Office of the Secretary of State on October 29, 2010.

TRD-201006124

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: December 12, 2010

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



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 25. SPECIAL NUTRITION PROGRAMS

SUBCHAPTER A. CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

The Texas Department of Agriculture (department) proposes the repeal of Chapter 25, Subchapter A, relating to the Child and Adult Care Food Program (CACFP). Subchapter A is comprised of Division 1, §§25.1 - 25.4, relating to the overview and purpose of the program; Division 2, §§25.11 - 25.37, relating to the eligibility of contractors and facilities; Division 3, §§25.61 - 25.68, relating to the contractor application process; Division 4, §§25.81 - 25.92, relating to program agreements; Division 5, §§25.111 - 25.122, relating to contractor standards and responsibilities; Division 6, §§25.141 - 25.154, relating to budgets; Division 7, §§25.161 - 25.165, relating to financial management; Division 8, §§25.171 - 25.183, relating to reporting and record retention; Division 9, §§25.191 - 25.198, relating to meal requirements; Division 10, §§25.211 - 25.233, relating to day care homes; Division 11, §§25.261 - 25.269, relating to start-up and expansion payments; Division 12, §§25.281 - 25.290, relating to advance payments; Division 13, §§25.311 - 25.317, relating to commodities and cash-in-lieu assistance; Division 14, §§25.331 - 25.363, relating to reimbursement; Division 15, §§25.381 - 25.383, relating to overpayments; Division 16, §§25.391 - 25.406, relating to program reviews, monitoring, and management evaluations; Division 17, §§25.421 - 25.425, relating to audits; Division 18, §§25.441 - 25.472, relating to sanctions, penalties, and fiscal action; and Division 19, §§25.491 - 25.497, relating to denials and termination. The repeals are proposed so that the department may publish uniform rules relating to the department's oversight of the Child and Adult Care Food Program. The repealed sections will be replaced by revised rules addressing the same substantive areas. The proposed new rules are published in the Proposed Rules section of this issue of the *Texas Register*.

Angela Olige, Assistant Commissioner for Food and Nutrition, has determined that for the first five-year period the proposed repeals are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the repeals.

Ms. Olige has also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be having updated and accurate rules for the Child and Adult Care Food Program. The proposed repeals will not have a fiscal impact on micro-businesses, small businesses or individuals required to comply with the repeals.

Comments on the proposal may be submitted to Angela Olige, Assistant Commissioner for Food and Nutrition, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received not later than 30 days from the date of publication of the proposal in the *Texas Register*.

DIVISION 1. OVERVIEW AND PURPOSE

4 TAC §§25.1 - 25.4

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

The repeal of Chapter 25, Subchapter A, Division 1, §§25.1 - 25.4, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.1. *What is the purpose of the Child and Adult Care Food Program (CACFP)?*

§25.2. *What do certain words and terms in this subchapter mean?*

§25.3. *How is the CACFP authorized?*

§25.4. *How may DHS use the CACFP federal assistance?*

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

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



DIVISION 2. ELIGIBILITY OF CONTRACTORS AND FACILITIES

4 TAC §§25.11 - 25.37

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the

Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 25, Subchapter A, Division 2, §§25.11 - 25.37, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.11. *What requirements must contractors and facilities meet in order to be eligible to participate in the CACFP?*

§25.12. *Must contractors and facilities be licensed or approved in order to participate in the CACFP?*

§25.13. *Who is the licensing authority in Texas?*

§25.14. *Are there any exceptions to the licensing requirements?*

§25.15. *When must a contractor submit copies of its license or registration?*

§25.16. *Must a contractor comply with training requirements in order to be eligible to participate in the CACFP?*

§25.17. *Must a nonprofit contractor have tax-exempt status in order to be eligible to participate in the CACFP?*

§25.18. *Must a proprietary for-profit organization or a sponsored for-profit facility meet specific eligibility requirements in order to be eligible to participate in the CACFP?*

§25.19. *Are there any exceptions to the eligibility requirements stated in 7 CFR §226.15 for a proprietary for-profit child care center or a for-profit sponsored child care facility?*

§25.20. *What is the Free/Reduced-Price Expanded Eligibility Pilot criterion?*

§25.21. *Must a renewing contractor show compliance with the single audit requirements in 7 CFR Part 3052 in order to participate in the CACFP?*

§25.22. *How does a contractor demonstrate compliance with the single audit requirements when applying to participate in the CACFP?*

§25.23. *Must child care facilities distribute information about other programs?*

§25.24. *Are there any exceptions to the requirement regarding distribution of materials?*

§25.25. *Must an organization satisfy specific requirements in order to be eligible to participate in the CACFP as a day care home sponsor?*

§25.26. *Where must a contractor obtain a performance bond?*

§25.27. *How often must an organization submit a performance bond?*

§25.28. *Must the dollar amount of the performance bond be adjusted?*

§25.29. *What happens if an organization has fewer than three years of administrative and financial history?*

§25.30. *When must a representative of the organization make records available at the primary physical location?*

§25.31. *When must a representative of the organization be available at the primary physical location?*

§25.32. *How must a contractor make itself available to DHS and providers?*

§25.33. *What must happen if a contractor's primary physical location changes?*

§25.34. *How do contractors and facilities qualify to participate in the CACFP At Risk Afterschool Snack program?*

§25.35. *Are supervised athletic activities ever allowed in the CACFP At Risk Afterschool Snack program?*

§25.36. *What information must contractors that operate or sponsor the participation of one or more emergency shelters provide to demonstrate that they qualify to participate in the CACFP as an emergency shelter?*

§25.37. *Are there any conditions that would make a contractor ineligible to participate in the CACFP?*

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

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DIVISION 3. CONTRACTOR APPLICATION PROCESS

4 TAC §§25.61 - 25.68

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

The repeal of Chapter 25, Subchapter A, Division 3, §§25.61 - 25.68, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.61. *Must a contractor submit an application to participate in the CACFP?*

§25.62. *What must a contractor do if the information on its application changes from what was originally submitted?*

§25.63. *What criteria does DHS use to approve or deny applications for participation?*

§25.64. *Because of its status as a nonprofit, is there any information a sponsor is required to include in its application to meet Internal Revenue Service requirements?*

§25.65. *What information must a contractor submit in its program application?*

§25.66. *Does DHS conduct pre-approval visits to child care contractors applying to participate in the CACFP?*

§25.67. *What happens if a contractor's application is incomplete?*

§25.68. *Can a contractor reapply if its application is denied?*

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

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DIVISION 4. AGREEMENTS

4 TAC §§25.81 - 25.92

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

The repeal of Chapter 25, Subchapter A, Division 4, §§25.81 - 25.92, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.81. *Is a contractor required to enter into an agreement with DHS in order to participate in the CACFP?*

§25.82. *What is the nature of this agreement?*

§25.83. *Is a facility required to enter into an agreement with a sponsoring organization to participate in the CACFP?*

§25.84. *Is this also a legally binding document that specifies the rights and responsibilities of both the sponsor and facility?*

§25.85. *Must a contractor that purchases meals from a food service management company (FSMC) or school food authority (SFA) enter into a contract with that entity?*

§25.86. *What is the term of this agreement?*

§25.87. *How may this agreement be extended?*

§25.88. *Can an extension last more than 12 months?*

§25.89. *What information must a contractor include in its agreement?*

§25.90. *What happens if an FSMC does not provide a contractor with monthly billing records by the specified date?*

§25.91. *Can an organization have more than one agreement with DHS to participate as a CACFP day care home contractor, child care center contractor, or adult day care center contractor?*

§25.92. *What if the organization is legally distinct from a current CACFP contractor?*

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

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**DIVISION 5. CONTRACTOR STANDARDS
AND RESPONSIBILITIES**

4 TAC §§25.111 - 25.122

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

The repeal of Chapter 25, Subchapter A, Division 5, §§25.111 - 25.122, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.111. *Must a contractor follow specific procurement guidelines to obtain food, supplies, and other goods and services for the CACFP?*

§25.112. *How must a contractor obtain the title to, use, and dispose of equipment used in the operation of the CACFP?*

§25.113. *Under what standards must a child care or adult day care center contractor determine a participant's eligibility for free and reduced-price meals?*

§25.114. *How must DHS and child care or adult day care center contractors verify the eligibility of program participants for free and reduced-price meals?*

§25.115. *Are there any restrictions on the type of meals that an adult day care center contractor can claim for reimbursement?*

§25.116. *Can a contractor consider individuals who live in residential institutions and attend the adult day care center during the day as "enrolled" on the center's claim forms?*

§25.117. *Is a contractor who is approved to operate the CACFP At Risk Afterschool Snack program required to provide snacks free of charge to its participants?*

§25.118. *Will contractors be discriminated against in the CACFP?*

§25.119. *Is a contractor required to prevent discrimination against participants in its CACFP operations?*

§25.120. *Are contractors and facilities required to ensure that health, safety, and sanitation standards are enforced?*

§25.121. *Must a contractor provide training and technical assistance to its center or sponsored facility staff?*

§25.122. *Can a contractor implement a change to its approved management plan before DHS approves the change?*

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

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DIVISION 6. BUDGETS

4 TAC §§25.141 - 25.154

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

The repeal of Chapter 25, Subchapter A, Division 6, §§25.141 - 25.154, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.141. *How must a contractor submit an administrative budget for DHS approval?*

§25.142. *What information must a day care home sponsor include when submitting its budget?*

§25.143. *What are the program functions that should be included in a budget?*

§25.144. *What should the contractor do if the required program functions are provided at no cost to the program?*

§25.145. *How must a contractor manage payment of costs that are not allowable uses of program funds?*

§25.146. *How does DHS handle adjustments to the budget?*

§25.147. *When must a contractor submit its budget to DHS?*

§25.148. *Will DHS approve a budget adjustment retroactively?*

§25.149. *What happens if a day care home sponsor operates at a deficit?*

§25.150. *What happens if a day care home sponsor exceeds the allowable amounts calculated under 7 CFR §226.12?*

§25.151. *How must a contractor report donations on its budget?*

§25.152. *How does DHS determine the limits of a day care home sponsor's budget?*

§25.153. *What part of the budget can DHS limit?*

§25.154. *What budget information must a contractor provide when it applies for start-up or expansion funds?*

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

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DIVISION 7. FINANCIAL MANAGEMENT

4 TAC §§25.161 - 25.165

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

The repeal of Chapter 25, Subchapter A, Division 7, §§25.161 - 25.165, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.161. *Is a contractor required to implement a particular financial management system?*

§25.162. *Must a contractor maintain financial management system records related to its participation in the CACFP?*

§25.163. *Is a Day Activity and Health Services (DAHS) center that participates in the CACFP required to report any reimbursement it receives while taking part in the CACFP?*

§25.164. *Can a contractor use CACFP funds to assist eligible unlicensed or unregistered potential day care homes to become licensed or registered?*

§25.165. *Can a contractor use CACFP funds to assist potential day care homes to become licensed or registered if those providers have previously received CACFP funds?*

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

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DIVISION 8. REPORTING AND RECORD RETENTION

4 TAC §§25.171 - 25.183

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

The repeal of Chapter 25, Subchapter A, Division 8, §§25.171 - 25.183, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.171. *How must a contractor submit reports to DHS?*

§25.172. *What information must a contractor keep to support reports submitted to DHS?*

§25.173. *How long must a contractor maintain records and documents pertaining to the CACFP?*

§25.174. *How long must a contractor maintain program-related documentation if litigation, claims, audits, or investigations involving these records occur before the end of three years and 90 days?*

§25.175. *When is litigation, a claim, an audit, or an investigation finding resolved?*

§25.176. *Must a contractor provide access to its facilities and records?*

§25.177. *How must a sponsoring organization with more than one approved facility maintain records?*

§25.178. *Can a sponsoring organization maintain CACFP records with other program records?*

§25.179. *Must a sponsoring organization ensure that facilities maintain certain records daily?*

§25.180. *What forms must a contractor use to administer the CACFP?*

§25.181. *What is the authority for maintaining and submitting records?*

§25.182. *What management information must a day care home sponsor submit each month?*

§25.183. *In what form must this information be submitted?*

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

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DIVISION 9. MEAL REQUIREMENTS

4 TAC §§25.191 - 25.198

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the

Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 25, Subchapter A, Division 9, §§25.191 - 25.198, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.191. *Must a contractor ensure that all meals served and claimed for reimbursement satisfy the CACFP program requirements?*

§25.192. *How much time can elapse between meals?*

§25.193. *How long can individual meal times last?*

§25.194. *Are there any exceptions?*

§25.195. *Can a day care home sponsor require the use of pre-planned pre-printed menus?*

§25.196. *Can a day care home sponsor provide pre-planned pre-printed menus as a training tool only?*

§25.197. *Can a day care home use pre-planned menus?*

§25.198. *Can a contractor claim reimbursement for meals served to eligible program participants during field trips?*

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

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Dolores Alvarado Hibbs

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Texas Department of Agriculture

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DIVISION 10. DAY CARE HOMES

4 TAC §§25.211 - 25.233

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

The repeal of Chapter 25, Subchapter A, Division 10, §§25.211 - 25.233, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.211. *What materials must a day home sponsor submit in order for a day care home to be approved to participate in the CACFP?*

§25.212. *Is there a time frame by which a day home sponsor must submit application materials in order for a day care home to be approved to participate in the CACFP in a given month?*

§25.213. *What constitutes a complete and correct Day Care Home Application?*

§25.214. *Is there any information on the Day Care Home Application that DHS can complete or correct on behalf of the provider?*

§25.215. *What constitutes a complete and correct Agreement Between Sponsor and Day Care Home Provider?*

§25.216. *Is there any information on the Agreement Between Sponsor and Day Care Home Provider that DHS can complete or correct on behalf of the provider?*

§25.217. *How does DHS determine the date a day care home can participate in the CACFP?*

§25.218. *Which days of the week does DHS approve as meal service days for day care homes?*

§25.219. *Can a day care home that is currently participating in the CACFP under one sponsor sign an agreement to participate with a different sponsor?*

§25.220. *Can a day care home change sponsors more than once during the program year?*

§25.221. *What is good cause for transferring?*

§25.222. *Can a day care home participate with more than one sponsor in the same month?*

§25.223. *Can a day care home provider that participates in the CACFP actively take part in any sponsor's day-to-day operations, either full- or part-time?*

§25.224. *Can a day care home provider be a board member of a sponsoring organization?*

§25.225. *Can a day care home provider that has been found guilty of committing fraud in the CACFP still participate in the CACFP?*

§25.226. *Is a day care home required to attend program-related training to qualify to participate in the CACFP?*

§25.227. *Does DHS limit the number of day care homes that a new contractor may sponsor?*

§25.228. *If DHS limits the number of day care homes that a newly approved contractor can sponsor, how can the contractor gain additional homes?*

§25.229. *Does DHS limit the number of day care homes that a contractor currently participating in the CACFP may sponsor?*

§25.230. *Does DHS approve additional day care homes for contractors already participating in the CACFP?*

§25.231. *How does DHS notify a contractor that its total number of day care homes has been limited?*

§25.232. *On what does DHS base its adjustment?*

§25.233. *In addition to the provisions of 7 CFR §226.13 and §226.18, what other guidelines must a contractor that sponsors day care homes follow?*

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

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Dolores Alvarado Hibbs
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Texas Department of Agriculture
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DIVISION 11. START-UP AND EXPANSION PAYMENTS

4 TAC §§25.261 - 25.269

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

The repeal of Chapter 25, Subchapter A, Division 11, §§25.261 - 25.269, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

- §25.261. *What are start-up and expansion payments?*
- §25.262. *Which contractors are eligible to request start-up and expansion payments?*
- §25.263. *How does a contractor apply to receive start-up and expansion payments?*
- §25.264. *How does DHS issue start-up payments to contractors that sponsor or want to sponsor day care homes?*
- §25.265. *How does DHS issue expansion payments to day care home sponsors?*
- §25.266. *How does DHS determine the amount of expansion payments issued to a day care home sponsor?*
- §25.267. *How must a day care home sponsor use expansion payments?*
- §25.268. *How must a day care home sponsor use start-up payments?*
- §25.269. *Can start-up or expansion payments awarded to day care home sponsors be used to recruit day care homes that are already participating with another DHS-approved sponsoring organization?*

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

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DIVISION 12. ADVANCE PAYMENTS

4 TAC §§25.281 - 25.290

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

The repeal of Chapter 25, Subchapter A, Division 12, §§25.281 - 25.290, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

- §25.281. *Does DHS issue and monitor advance payments to contractors according to a specific procedure?*
- §25.282. *How must a contractor account for advance funds?*
- §25.283. *How does DHS issue advance payments to a contractor that has a claim history?*
- §25.284. *How does DHS issue advance payments to a contractor that does not have a claim history?*
- §25.285. *How does DHS estimate advance payment amounts?*
- §25.286. *Does DHS issue retroactive advances?*
- §25.287. *What happens if USDA does not provide sufficient funds for DHS to pay both advance payments and claims for reimbursement in full?*
- §25.288. *How does DHS recoup advance payments?*
- §25.289. *What happens if the advance payment exceeds the reimbursement earned in the month for which the advance is issued?*
- §25.290. *What happens if a contractor who sponsors day care homes does not comply with program 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.

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DIVISION 13. COMMODITIES AND CASH-IN-LIEU ASSISTANCE

4 TAC §§25.311 - 25.317

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

The repeal of Chapter 25, Subchapter A, Division 13, §§25.311 - 25.317, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer

federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.311. *Does DHS provide commodity assistance to contractors?*

§25.312. *How does DHS determine whether to issue commodities or cash-in-lieu of commodities?*

§25.313. *If a day care home sponsor chooses to distribute bonus commodities to its day care homes, how does it determine the number of commodities to distribute to each day care home?*

§25.314. *Who covers the costs of distributing bonus commodities?*

§25.315. *Can a sponsoring organization include administrative costs associated with the distribution of bonus commodities in its CACFP costs?*

§25.316. *What does DHS require of a day care home sponsoring organization before that organization can submit charges to its day care homes?*

§25.317. *Are facilities or centers required to receive bonus commodities?*

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

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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DIVISION 14. REIMBURSEMENT

4 TAC §§25.331 - 25.363

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

The repeal of Chapter 25, Subchapter A, Division 14, §§25.331 - 25.363, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.331. *Under what authority does DHS reimburse a contractor for its participation in the CACFP?*

§25.332. *Under what authority must contractors reimburse facilities?*

§25.333. *How does DHS assign reimbursement rates for contractors?*

§25.334. *What options does DHS use to reimburse contractors?*

§25.335. *How does DHS compute reimbursement for approved child care centers, outside-school-hours care centers, adult day care centers, and day care homes?*

§25.336. *What are Title III benefits?*

§25.337. *Can independent adult day care centers and contractors that sponsor adult day care centers claim reimbursement for meals supported by Title III of the Older Americans Act?*

§25.338. *If a contractor uses a food service management company to prepare the meals served at the adult day care center, who is responsible for ensuring that neither Title III funds nor commodities were used in the meals?*

§25.339. *How many snacks can a CACFP At Risk Afterschool Snack program contractor claim for reimbursement?*

§25.340. *What are the requirements for submitting a claim for reimbursement for a snack?*

§25.341. *What rate does DHS use to reimburse contractors who operate the CACFP At Risk Afterschool Snack program?*

§25.342. *Can a contractor be reimbursed for after school snacks served to participants in an approved At Risk Afterschool program in addition to the meals provided in traditional child care?*

§25.343. *What is the maximum number of reimbursable meals under the CACFP?*

§25.344. *Are there any exceptions?*

§25.345. *How many meals can a contractor that sponsors or operates emergency shelters for homeless children include in a claim for reimbursement?*

§25.346. *Are there any meals for which emergency shelters for homeless children contractors cannot claim reimbursement?*

§25.347. *Must a contractor claim reimbursement within a specific time period?*

§25.348. *Who is responsible for the accuracy of the information submitted on the contractor's claim for reimbursement?*

§25.349. *Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?*

§25.350. *How does DHS process a claim received later than 60 days after the end of the claim month(s)?*

§25.351. *What happens if DHS finds that good cause did not exist?*

§25.352. *What happens if DHS finds that good cause beyond the contractor's control existed?*

§25.353. *What happens if USDA finds that good cause existed?*

§25.354. *What happens if USDA finds that good cause did not exist?*

§25.355. *Does a contractor have the option not to submit a request for payment of a late claim based on good cause?*

§25.356. *If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?*

§25.357. *What guidelines must a contractor use when serving second meals?*

§25.358. *How must a contractor claim reimbursement for second meals?*

§25.359. *Can a contractor that serves meals family style claim reimbursement for second meals?*

§25.360. *Can a day care home claim CACFP reimbursement for meals served to another day care home provider's own children when both providers participate in the CACFP?*

§25.361. *Can the day care home provider's own child be considered a nonresidential child for the purpose of claiming reimbursement for a meal service at the day care home of another provider?*

§25.362. *What age group of children must an emergency shelter or homeless site serve in order to be eligible to participate as a contractor in the CACFP?*

§25.363. *Are there any exceptions?*

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

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DIVISION 15. OVERPAYMENTS

4 TAC §§25.381 - 25.383

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

The repeal of Chapter 25, Subchapter A, Division 15, §§25.381 - 25.383, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.381. *How does DHS manage overpayment of claims for reimbursement, advance payments, start-up, and expansion fund payments?*

§25.382. *What happens to program funds that a day care home sponsor recovers from a day care home?*

§25.383. *Can a day care home sponsor use CACFP funds to recruit day care homes?*

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

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DIVISION 16. PROGRAM REVIEWS, MONITORING, AND MANAGEMENT EVALUATIONS

4 TAC §§25.391 - 25.406

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

The repeal of Chapter 25, Subchapter A, Division 16, §§25.391 - 25.406, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.391. *Is a contractor required to monitor its own program operations?*

§25.392. *Does DHS conduct periodic visits to CACFP contractors?*

§25.393. *How does DHS determine which contractors to visit?*

§25.394. *Does DHS require sponsors of day care homes to verify participation of the children in their day care homes?*

§25.395. *How must a day care home sponsor verify the participation of the children claimed?*

§25.396. *How must a day care home sponsor verify a child's enrollment in a day care home?*

§25.397. *Can a contractor verify the participation of children in day care homes even if the day care home is neither randomly selected for verification by DHS nor requires additional verification of participation after being randomly selected by DHS?*

§25.398. *How does a day care home sponsor conduct reviews of day care homes?*

§25.399. *How does a center sponsor conduct reviews of its sponsored facilities?*

§25.400. *What type of monitoring reviews must a day care home sponsor conduct?*

§25.401. *Must the day care home sponsor observe a meal service during each monitoring review?*

§25.402. *What happens if the day care home sponsor cannot confirm program participation?*

§25.403. *When must a day care home sponsor conduct monitoring reviews of day care homes that participate on weekends?*

§25.404. *How does a contractor that sponsors the participation of child and adult care centers conduct monitoring reviews of its sponsored facilities?*

§25.405. *Is a contractor that uses a food service management company (FSMC) contract required to monitor contracts with the FSMC?*

§25.406. *What happens if the health and well being of a program participant is at risk because of program deficiencies identified during an FSMC 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.

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DIVISION 17. AUDITS

4 TAC §§25.421 - 25.425

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

The repeal of Chapter 25, Subchapter A, Division 17, §§25.421 - 25.425, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.421. *Are contractors and sponsored facilities that participate in the CACFP subject to audit?*

§25.422. *Are certain contractors exempt from the single audit requirements?*

§25.423. *When is an audit considered acceptable?*

§25.424. *How is a contractor informed of its obligation to comply with the single audit requirements?*

§25.425. *Does DHS reimburse a contractor for the cost of obtaining a single audit?*

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

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DIVISION 18. SANCTIONS, PENALTIES, AND FISCAL ACTION

4 TAC §§25.441 - 25.472

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

The repeal of Chapter 25, Subchapter A, Division 18, §§25.441 - 25.472, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.441. *Does DHS investigate and resolve program deficiencies, program irregularities, and evidence of violations of criminal law or civil fraud statutes?*

§25.442. *What does DHS do if a contractor fails to comply with the CACFP requirements in 7 CFR Part 226 and this subchapter?*

§25.443. *What does DHS do if DHS learns that a contractor has submitted false information on its program application?*

§25.444. *What happens to eligible day care home providers or centers when their sponsoring organization is disqualified?*

§25.445. *What happens if a contractor fails to attend mandatory DHS training?*

§25.446. *What happens if a day care home sponsor fails to properly monitor or train providers when program violations related to monitoring or training of providers identified during an administrative review exceed a tolerance level of one provider or 10% of the providers sampled, whichever amount is greater?*

§25.447. *What happens if DHS determines during the follow-up review that the day care home sponsor has not corrected all program noncompliances identified in the initial review?*

§25.448. *What happens after the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?*

§25.449. *What happens if a day care home sponsor fails to ensure that a claim is submitted only for eligible meals served to eligible children?*

§25.450. *What happens if DHS determines during the test month of the initial review that 10% or more of the meals sampled and claimed for reimbursement fail to meet program requirements?*

§25.451. *What happens if DHS determines during the follow-up review that 10% or more of the meals sampled and claimed for reimbursement for the test month fail to meet program requirements?*

§25.452. *What happens even if less than 10% of all meals claimed for the test month of the follow-up are ineligible?*

§25.453. *What happens during the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?*

§25.454. *What happens if a day care home sponsor fails to disburse program funds to providers according to program requirements when program violations related to the disbursement of program funds to providers identified during an administrative review exceed a tolerance level of one provider or 10% of the providers sampled, whichever amount is greater?*

§25.455. *What happens if DHS determines during the follow-up review that the day care home sponsor has not corrected all instances of program noncompliance identified in the initial review?*

§25.456. *What happens after the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?*

§25.457. *What happens if, during a review or an audit, DHS cites a day care home sponsor for deficiencies in administrative or financial capabilities because the sponsor has too many day care homes?*

§25.458. *Can a day care home sponsor that is deficient in program operations add day care homes?*

§25.459. *What does DHS do if a contractor that is subject to the single audit requirements fails to submit an audit as required?*

§25.460. *What does DHS do if a contractor fails to accomplish the required corrective action and permanently correct the serious deficiency regarding its single audit?*

§25.461. *Can a contractor appeal this action?*

§25.462. *If a contractor subject to the single audit requirements fails to obtain and submit an acceptable audit by the specified due date and*

DHS either conducts the audit or arranges for an audit to be conducted by a third party, who must pay for the audit?

§25.463. Can DHS extend the deadline by which a contractor must submit an audit?

§25.464. How must a contractor request an extension of its audit deadline?

§25.465. Is DHS required to grant a contractor an extension of its audit deadline?

§25.466. How is a new audit due date determined?

§25.467. How is the contractor informed of the decision regarding the extension of its audit due date?

§25.468. Can a contractor request more than one extension?

§25.469. What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?

§25.470. Must a contractor repay any overpayments identified through an audit finding?

§25.471. What happens if a day care home sponsor determines during a monitoring review or by other means that a provider has been seriously deficient in its operation of the CACFP?

§25.472. What happens if a day care home sponsor conducts two or more unannounced monitoring reviews in a 12-month period and cannot confirm that children are enrolled for child care and participating in the program?

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

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DIVISION 19. DENIALS AND TERMINATION

4 TAC §§25.491 - 25.497

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

The repeal of Chapter 25, Subchapter A, Division 19, §§25.491 - 25.497, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.491. What criteria does DHS use to deny applications and to terminate agreements for participation in the CACFP when a contractor fails to meet eligibility requirements?

§25.492. How does DHS notify a contractor of its denial of an application or proposal to terminate an agreement?

§25.493. Does DHS deny an application for participation or terminate an agreement when a contractor subject to the bonding requirement identified in 7 CFR §226.6 and Division 2 of this subchapter (relating to Eligibility of Contractors and Facilities) fails to comply with that requirement?

§25.494. Can a contractor request relief from the bonding requirement?

§25.495. What criteria must a day care home sponsor use to deny or terminate agreements with a day care home?

§25.496. How does a day care home sponsor notify a day care home participating in the CACFP of its proposal to terminate the day care home's participation in the program?

§25.497. Does DHS terminate an agreement with a contractor or deny the application of a contractor that has failed to permanently correct a serious deficiency in the administration of the CACFP?

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

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SUBCHAPTER A. CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

The Texas Department of Agriculture (TDA) proposes new Chapter 25, Subchapter A, concerning the Child and Adult Care Food Program (CACFP). The new subchapter is proposed to reflect the transfer of CACFP from the Texas Health and Human Services Commission to TDA. Further, the new subchapter is proposed to adopt a concise and streamlined rule format; expand rule language to accurately reflect all types of sponsorships; omit information about concluded pilot programs; ensure consistency with the current Code of Federal Regulations (CFR); clarify maintenance, retention and availability of CACFP records; and introduce several new rules aimed at increasing the integrity of CACFP. TDA, in a separate submission, is proposing the repeal of the existing CACFP rules currently contained in Chapter 25, Subchapter A, Divisions 1 - 19.

Subchapter A is comprised of the following:

Division 1, §§25.1 - 25.4 address CACFP generally. Proposed §25.1 contains a statement of purpose. Proposed §25.2 contains definitions related to CACFP administration. Proposed §25.3 contains a statement of authorization for the administration of CACFP. Proposed §25.4 contains terms of use for CACFP federal assistance.

Division 2, §§25.11 - 25.17 address eligibility requirements. Proposed §25.11 contains general eligibility requirements. Proposed §25.12 contains contractor and facility licensure requirements. Proposed §25.13 contains exceptions to licensure requirements. Proposed §25.14 contains contractor training

requirements. Proposed §25.15 contains requirements for proof of tax-exempt status. Proposed §25.16 contains eligibility requirements for for-profit organizations or sponsored for-profit facilities. Proposed §25.17 contains performance bond requirements.

Division 3, §§25.21 - 25.23 address the contractor application process. Proposed §25.21 contains application requirements and procedures. Proposed §25.22 contains requirements for governing body awareness and performance based standards. Proposed §25.23 contains additional requirements for contractors.

Division 4, §§25.31 - 25.33 address agreements related to CACFP. Proposed §25.31 contains contracting requirements for contractors and facilities. Proposed §25.32 contains contracting requirements for contractors that use a food service management company, school food authority or vendor. Proposed §25.33 contains information regarding Food and Nutrition Division agreements.

Division 5, §§25.41 - 25.48 address contractor standards and responsibilities. Proposed §25.41 contains procurement guidelines. Proposed §25.42 contains guidelines for use and disposal of equipment. Proposed §25.43 contains requirements in regard to determining a participant's eligibility for free and reduced-price meals. Proposed §25.44 contains requirements in regard to verification of eligibility of participants. Proposed §25.45 contains non-discrimination compliance requirements. Proposed §25.46 contains training and technical assistance requirements. Proposed §25.47 contains rules regarding management plan changes. Proposed §25.48 contains information regarding when a facility may change sponsors.

Division 6, §§25.51 - 25.53 address budget requirements. Proposed §25.51 contains requirements regarding submission of an administrative budget. Proposed §25.52 contains requirements for budget amendments. Proposed §25.53 contains provisions related to determination of budget limits.

Division 7, §25.61 and §25.62 address financial management. Proposed §25.61 contains financial management system requirements. Proposed §25.62 contains record management and retention requirements.

Division 8, §§25.71 - 25.75 address reporting and record retention. Proposed §25.71 contains requirements for record maintenance. Proposed §25.72 contains records availability requirements. Proposed §25.73 contains requirements for contractor's availability. Proposed §25.74 contains notification requirements when a contractor changes its primary business location. Proposed §25.75 contains requirements in regard to use of forms.

Division 9, §25.81 and §25.82 address meal requirements. Proposed §25.81 contains requirements for claimed meals. Proposed §25.82 contains meal service guidelines.

Division 10, §§25.91 - 25.96 address day care home requirements. Proposed §25.91 contains application requirements for the participation of sponsored day care homes. Proposed §25.92 contains eligibility of day care homes. Proposed §25.93 contains how a day care home may change sponsors. Proposed §25.94 contains information about a day care home's ineligibility if convicted, including deferred adjudication, of fraud. Proposed §25.95 contains limitations to the sponsorship of day care homes. Proposed §25.96 contains additional guidelines for day care home sponsors.

Division 11, §25.101 addresses start-up and expansion funds. Proposed §25.101 contains information regarding the eligibility, application, issuance, use and monitoring of start-up and expansion funds.

Division 12, §§25.111 - 25.115 address advance payments. Proposed §25.111 contains advance payment regulations. Proposed §25.112 contains information regarding issuance of advances. Proposed §25.113 prohibits retroactive advance payments. Proposed §25.114 contains limitations on advance funding. Proposed §25.115 contains information on recoupment of advance payments.

Division 13, §§25.121 - 25.127 address information regarding commodities and cash-in-lieu assistance. Proposed §25.121 contains information on how TDA provides commodity assistance. Proposed §25.122 contains information in regard to determining if commodity assistance or cash-in-lieu is provided to contractors. Proposed §25.123 contains information about commodity distribution. Proposed §25.124 contains information about allowable costs in regard to distribution expenses. Proposed §25.125 contains information in regard to administrative expenses. Proposed §25.126 contains information regarding when a sponsor may pass distribution costs to day care homes. Proposed §25.127 contains information regarding the right to refuse commodities.

Division 14, §§25.131 - 25.143 address reimbursement. Proposed §25.131 contains TDA's authority to reimburse contractors for CACFP costs. Proposed §25.132 contains requirements that apply to contractors reimbursement of facilities. Proposed §25.133 contains information in regard to reimbursement rates. Proposed §25.134 contains information in regard to reimbursement options. Proposed §25.135 contains information in regard to reimbursement computation. Proposed §25.136 contains information about Title III benefits. Proposed §25.137 contains reimbursement information for Title III meals. Proposed §25.138 contains reimbursement information for meals and snacks. Proposed §25.139 contains requirements for filing claims. Proposed §25.140 contains information about late claims. Proposed §25.141 contains information about reimbursement for second meals. Proposed §25.142 contains information about family style meals. Proposed §25.143 contains information in regard to ineligible children in day care homes.

Division 15, §25.151 and §25.152 address overpayments; Proposed §25.151 contains information in regard to the management of overpayments. Proposed §25.152 prohibits day care home sponsors from using CACFP funds to recruit day care homes already participating in CACFP.

Division 16, §25.161 and §25.162 address CACFP reviews and monitoring. Proposed §25.161 contains information on how TDA conducts reviews and monitoring and requirements for sponsors to monitor their sponsored facilities. Proposed §25.162 requires contractors that purchase meals to monitor their vendor.

Division 17, §§25.171 - 25.174 address audits. Proposed §25.171 contains information about audits of contractors and sponsored facilities. Proposed §25.172 addresses acceptability of audits. Proposed §25.173 contains information in regard to notification to contractors. Proposed §25.174 contains information regarding allowability of audit expenses.

Division 18, §§25.181 - 25.184 address adverse actions, denials, and terminations. Proposed §25.181 contains information on investigations. Proposed §25.182 contains information in regard to adverse actions. Proposed §25.183 contains information re-

garding denial of applications and termination of agreements. Proposed §25.184 contains criteria for sponsoring organizations.

Division 19, §25.191 addresses appeals. Proposed §25.191 contains information in regard to conducting appeals.

Angela Olige, Assistant Commissioner for the Food and Nutrition Division, has determined that for the first five-year period the new sections are in effect, there will be no fiscal impact for the state or local government as a result of enforcing or administering the new sections.

Ms. Olige has also determined that for each year of the first five years the new sections are in effect, the anticipated public benefit resulting from the enforcement of the new sections will be a more efficient administration of the CACFP. The new sections may have a fiscal impact on micro-businesses, small businesses or individuals required to comply with bonding requirements. Some entities applying to participate in the CACFP as new sponsors may be required to obtain and maintain a performance bond. It is not possible to determine a set cost to these entities, as the bond amount will depend on many factors including the sponsor's anticipated enrollment and anticipated reimbursement amount, creditworthiness of entity, and market rates for bonds.

Comments on the proposal may be submitted to Angela Olige, Assistant Commissioner for Food and Nutrition Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*.

DIVISION 1. OVERVIEW AND PURPOSE

4 TAC §§25.1 - 25.4

The new §§25.1 - 25.4 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.1. Purpose of the Child and Adult Care Food Program (CACFP).
The CACFP integrates nutritious meals with organized nonresidential child and adult care services.

§25.2. Definitions.

(a) The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

(1) Appropriate Representative--Someone with knowledge of CACFP operations.

(2) CACFP--Child and Adult Care Food Program.

(3) CFR--The Code of Federal Regulations.

(4) Contractor--Refers to an "institution" as defined in 7 CFR §226.2.

(5) TDA--The Texas Department of Agriculture.

(6) Publicly funded program--Any program or grant funded by public funds, including federal, state, or local government funds.

(7) Program year--The period beginning October 1 of any year and ending September 30 of the following year.

(8) U.S.C.--United States Code.

(9) USDA--The United States Department of Agriculture.

(b) Other terms used in this subchapter are defined in 7 CFR §226.2; 7 CFR Parts 3015, 3016, 3017, 3018, 3019, and 3052; and applicable Office of Management and Budget circulars as required by USDA's Food and Nutrition Service.

§25.3. Authorization for CACFP.

The National School Lunch Act (42 U.S.C §1766), as amended, authorizes federal assistance to states that administer CACFP. In the state of Texas, TDA administers CACFP.

§25.4. Use of CACFP Federal Assistance.

TDA may use the assistance to help start, maintain, and expand non-profit food services for children and adults enrolled for care in nonresidential facilities or institutions.

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

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DIVISION 2. ELIGIBILITY OF CONTRACTORS AND FACILITIES

4 TAC §§25.11 - 25.17

The new §§25.11 - 25.17 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.11. Eligibility Requirements for CACFP Participation.

(a) Contractors and facilities must meet the requirements stated in §17(a)(2)(B) of the National School Lunch Act (42 U.S.C. §1766), as amended, 7 CFR §§226.2, 226.6, 226.15 - 226.19a, and 226.23, and TDA CACFP Handbooks.

(b) Contractors applying to participate as a sponsor of unaffiliated centers in the CACFP as a new organization or reapplying to participate after a break in service must document an unmet need as outlined in the TDA CACFP Handbooks.

§25.12. Contractor and Facility Licensure/Approval Requirements.

All contractors and facilities must be licensed or approved by federal, state, or local authorities to provide child or adult care.

§25.13. Exceptions to the Licensure Requirements.

(a) Centers and facilities operated by federal and Indian tribal governments are not required to be licensed or approved by state or local authorities. The federal agency or Indian tribal government that has oversight of the center or facility must license or approve the center or facility.

(b) Emergency shelters and contractors who participate in the at-risk afterschool and outside-school-hours care center programs may be exempt from state licensing requirements. The center or facility must provide sufficient information or documentation to demonstrate that the center or facility is exempt from state licensing.

§25.14. Contractor Training Requirements.

Each contractor must participate in training related to the operation of CACFP as TDA prescribes.

§25.15. Proof of Tax-Exempt Status.

To prove tax-exempt status, a contractor must submit:

(1) determination of tax-exempt status from the Internal Revenue Service; or

(2) proof of participation in another federally funded program that requires an Internal Revenue Service determination of tax-exempt status.

§25.16. Eligibility Requirements for For-Profit Organizations or Sponsored For-Profit Facilities.

A for-profit organization or a sponsored for-profit facility must meet the eligibility requirements in 7 CFR §226.17 and §226.19a.

§25.17. Performance Bond Requirements for Sponsors.

(a) A sponsoring organization applying to participate in CACFP with less than three years of successful administrative and financial history shall may be required to obtain and maintain a performance bond from a company designated in United States Treasury Circular 570 as certified to issue bonds for federally funded programs in an amount specified by TDA unless or until it can demonstrate a total of three years of successful administrative and financial history within the preceding seven years or is a governmental entity.

(b) The initial amount of the performance bond will be determined by the sponsor's anticipated enrollment and the sum of the following formula for each meal type served: (Total Enrollment) x (Current Free Reimbursement Rate for Meal Type) x 90.

(c) The bond amount shall be adjusted to reflect actual enrollment or reimbursement as needed based on the following guidelines:

(1) If the sponsor's enrollment or reimbursement increases by 50% of the original anticipated enrollment then the bond must be increased to reflect the sponsor's actual enrollment or reimbursement within 45 days.

(2) Each time the sponsor's enrollment or reimbursement increases by 50% of the actual participation or reimbursement from the time the bond was last increased then the bond must be increased to reflect the sponsor's new actual enrollment or reimbursement within 45 days.

(3) A decrease in bond amount may be requested based on a decrease in enrollment or reimbursement by submitting a written request to TDA.

(d) A sponsor may request relief from the bonding requirement once it can demonstrate that is has accumulated three years of successful administrative and financial history within the preceding seven years by submitting a written request to TDA.

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DIVISION 3. CONTRACTOR APPLICATION PROCESS

4 TAC §§25.21 - 25.23

The new §§25.21 - 25.23 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.21. Application to Participate in CACFP.

(a) A contractor must submit a completed application for participation in CACFP to TDA. Contractors are informed of the specific information needed when they receive an application packet.

(b) A contractor must report to TDA any changes to the information contained on its application as prescribed in the TDA CACFP Handbook Forms and Instructions.

(c) TDA approves or denies applications for participation according to 7 CFR §§226.6, 226.15 - 226.19a, and 226.23; §17(a)(2)(B) of the National School Lunch Act (42 U.S.C. §1766), as amended; and this chapter.

(d) The contractor must submit its completed application to TDA within 45 days of the date of the written request for additional information. If the requested information is not received within 45 days, TDA will deny the application.

(e) A contractor whose application was denied due to subsection (d) of this section may reapply by submitting a new application.

§25.22. Governing Body Awareness Requirements.

(a) Each contractor must include in its application documentation that the governing body is aware of the responsibilities and liabilities of participating in CACFP and identifying information for each member of the governing body.

(1) Acceptable documentation of governing body awareness is:

(A) A copy of the minutes taken at an official meeting of the governing body, signed by the secretary of the board, demonstrating unanimous board support for CACFP participation and an understanding of the responsibilities and liabilities; or

(B) A written declaration by each member of the governing body which states they are aware of the responsibilities and liabilities of CACFP participation; or

(C) A combination of these methods which, when read together, accounts for each individual member of the governing body; or

(D) Any other documentation approved by TDA.

(2) Identifying information for each member of the governing body must include:

(A) Full legal name;

(B) Complete residential mailing address;

(C) Complete residential physical address, if different from mailing address;

(D) Phone number;

(E) Date of birth;

(F) Relationship with any other member or employee of the organization; and

(G) Amount of compensation, if any, received for services provided to the organization.

(b) Each sponsor must include in its application sufficient detail to demonstrate that it will operate according to the following standards:

(1) The majority of the governing body must be composed of members of the community who are not financially interested in the sponsor's activities and who are not related parties. For the purpose of this section:

(A) Majority means 50% plus one.

(B) Individuals who are not financially interested in the activities of the organization means individuals other than the employees of the organization or sponsored facilities.

(C) A related party is an individual who is related within the second degree of consanguinity or third degree by affinity to any member of the board of directors or employee of the sponsoring organization.

(2) Members of the governing body may not vote on decisions relating to their own compensation or that of a related party.

(3) The governing body must make decisions about compensation of employees and other parties providing services to the organization.

(4) No person receiving compensation for services under CACFP may receive compensation for services from any other sponsoring organization.

(5) A sponsor of day care homes providers must accept any qualified day care home provider, consistent with its capacity to provide services to sponsored facilities.

§25.23. Additional Requirements for Contracting Organizations.

(a) The following information must be submitted for each principal of a non-governmental non-profit organization contracting organization:

(1) government issued identification (state issued driver license, state issued identification card, military identification, valid U.S. passport or other identification approved by TDA);

(2) proof of residential mailing address (official mail sent to the individuals address from a utility provider, governmental agency or bank; a lease executed by the individual; or other proof approved by TDA).

(b) TDA may perform a criminal background investigation on each principal of a contracting organization. In the event such a report reveals that the applicant and/or principals knowing falsified any statements contained in the application TDA may seek criminal prosecution for any applicable state or federal charge.

(c) TDA shall deny an application based on the principal's background investigation if the investigation reveals any of the following: a criminal conviction in the past seven years that indicates a lack of business integrity, including but not limited to: fraud, anti-trust viola-

tions, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstructing justice.

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DIVISION 4. AGREEMENTS

4 TAC §§25.31 - 25.33

The new §§25.31 - 25.33 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.31. Participation Requirements.

(a) According to 7 CFR §§226.6, 226.15 - 226.19a, and 226.23, a contractor must enter into an agreement with TDA in order to participate in CACFP. The agreement is a legally binding document that specifies the rights and responsibilities of both the contractor and TDA.

(b) According to 7 CFR §§226.6, 226.15 - 226.19a, and 226.23, a facility must enter into an agreement with a sponsoring organization in order to participate in CACFP. The agreement between the facility and the sponsoring organization is a legally binding document that specifies the rights and responsibilities of the facility and the sponsoring organization.

§25.32. Purchased Meals.

(a) According to 7 CFR §§226.6, 226.17, 226.19, 226.19a, 226.21, and 226.22, contractors who purchase meals from a food service management contractor, school food authority, or other vendor must enter into an agreement with that food service management company, school food authority, or other vendor on a form approved by TDA.

(b) The agreement shall be for a maximum of 12 consecutive months.

(c) TDA may authorize a contractor to execute up to four 12-month renewals beyond the ending date of the original agreement, as long as there is no change in scope of service to the original contract.

(d) No agreement renewal can exceed 12 consecutive months.

§25.33. Food and Nutrition Division (FND) Agreement.

No organization may have more than one agreement with TDA to participate in any child nutrition program, unless the contractor provides justification for the need to have multiple agreements and that justification is approved by TDA.

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DIVISION 5. CONTRACTOR STANDARDS AND RESPONSIBILITIES

4 TAC §§25.41 - 25.48

The new §§25.41 - 25.48 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.41. Procurement Guidelines.

A contractor must procure food, supplies and other goods and services in accordance with 7 CFR §§226.2, 226.6, 226.21, and 226.22, and 7 CFR Part 3015.

§25.42. Title to Equipment; Use and Disposal.

A contractor must obtain the title to, use, and dispose of equipment according to 7 CFR §226.24 and 7 CFR Part 3015.

§25.43. Determination of a Participant's Eligibility for Free and Reduced-Price Meals.

A child care or adult day care center contractor or day care home sponsor must determine a participant's eligibility according to 7 CFR §§226.2, 226.6, 226.13, 226.15, 226.17 - 226.19a, and 226.23.

§25.44. Verification of Eligibility of Program Participants.

TDA and child care or adult day care center contractors or day care home sponsors must verify eligibility of CACFP participants for free and reduced-price meals according to 7 CFR §§226.2, 226.6, 226.13, 226.15, and 226.23.

§25.45. Non-discrimination.

(a) TDA administers CACFP without regard to race, color, national origin, sex, age or disability. TDA fully complies with the nondiscrimination requirements of 7 CFR §§226.6, 226.22, and 226.23, and 7 CFR Parts 15 and 15(a).

(b) A contractor must strictly adhere to and enforce the nondiscrimination requirements of 7 CFR §225.6, the Civil Rights Act of 1964, §504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. Contractors must prevent discrimination against participants in CACFP.

§25.46. Training and Technical Assistance.

A contractor must provide training and technical assistance which TDA deems reasonable and necessary to its center or sponsored facility staff according to 7 CFR §§226.6, 226.16, and 226.18 - 226.19a.

§25.47. Management Plan Changes.

TDA must approve all changes to a contractor's approved management plan before the contractor may implement the changes.

§25.48. Change of Sponsor.

(a) A child care facility or adult day care facility that is participating in CACFP under one sponsor can sign an agreement once each program year to participate with a different sponsor, as prescribed by TDA CACFP Handbooks.

(b) A child care facility or adult day care facility can enter into an agreement with a different sponsor more than once during the program year only if:

(1) the child care facility or adult day care facility sends a letter to TDA requesting the transfer and explaining why there is good cause to transfer to a different sponsor; and

(2) TDA determines that good cause exists and approved the transfer.

(c) Good cause for transferring from the sponsorship of one contractor to another during the program year is limited to:

(1) A sponsor denies a facility access to CACFP;

(2) A sponsor reduces the level of benefit a facility receives under CACFP; or

(3) Other good cause as determined to exist by TDA.

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DIVISION 6. BUDGETS

4 TAC §§25.51 - 25.53

The new §§25.51 - 25.53 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.51. Submission of Budget for Approval.

A contractor must submit its administrative budget for TDA approval according to 7 CFR §§226.6, 226.7, and 226.15.

§25.52. Retroactive Approval of Budget Amendments.

TDA will not approve budget adjustments/amendments retroactively. If TDA receives a request for a budget adjustment/amendment by the 25th day of the month, it may be effective for that month.

§25.53. Determination of Budget Limits.

(a) TDA will consider the size of CACFP operations, staff duties, and economic conditions of the locale.

(b) TDA may establish upper limits for salaries, overhead, and other administrative costs. All administrative costs must be necessary, reasonable, allowable, and appropriately documented.

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

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DIVISION 7. FINANCIAL MANAGEMENT

4 TAC §§25.61, §25.62

The new §25.61 and §25.62 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.61. Financial Management System.

A contractor must implement the financial management system TDA mandates, according to 7 CFR §§226.6, 226.7, 226.10, 226.11, 226.13, and 226.16, and 7 CFR Parts 3016 and 3019.

§25.62. Record Management and Retention.

A contractor must maintain records supporting the financial management system according to Division 8 of this subchapter (relating to Reporting and Record Retention).

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DIVISION 8. REPORTING AND RECORD RETENTION

4 TAC §§25.71 - 25.75

The new §§25.71 - 25.75 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP;

and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.71. Record Maintenance.

(a) Contractors and facilities must keep records in accordance with 7 CFR 226 and TDA CACFP Handbooks.

(b) Contractors and facilities must maintain CACFP records for a minimum of three years after the end of the program year and until all litigation, claims, audits, or investigation findings are resolved.

§25.72. Contractor Records Availability.

(a) Contractors must make CACFP records available to TDA at the contractor's primary business location during normal business hours, which at a minimum are 8:00 a.m. to 5:00 p.m. Monday through Friday.

(b) Contractors and their facilities must allow TDA access to the facilities and records according to 7 CFR §§226.6, 226.16, and 226.18. TDA may inspect, copy, photograph or otherwise document the condition of facilities and condition or absence of records in any commercially reasonable manner.

§25.73. Contractor Availability.

(a) A contractor is considered available to TDA and their sponsored facilities, if applicable, if one of the following conditions exists:

(1) the contractor's representative can be contacted in person at the primary business location during normal business hours;

(2) the contractor's representative can be contacted by telephone during normal business hours; or

(3) the contractor has established a procedure that allows TDA staff and the contractor's facilities to leave a voice message and the contractor returns the call no later than 24 hours from the time the voice message was left.

(b) An appropriate representative of the contractor must be available to meet with TDA staff at the contractor's primary business location with no more than 4 hours notice during normal business hours, which are at a minimum 8:00 a.m. to 5:00 p.m. Monday through Friday.

§25.74. Notification of Change in Primary Business Location.

A contractor must notify TDA in writing in advance of a change to its primary business location.

§25.75. Use of Forms.

A contractor must use TDA forms to operate and administer CACFP unless TDA grants approval otherwise.

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

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DIVISION 9. MEAL REQUIREMENTS

4 TAC §25.81, §25.82

The new §25.81 and §25.82 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.81. Meals--Program Requirements.

A contractor must ensure that all meals claimed, including meals purchased from a food service management company or other vendor, meet the requirements of 7 CFR §§226.2, 226.6, 226.13, and 226.15 - 226.20, and 7 CFR Appendix A to Part 226.

§25.82. Meal Service Guidelines.

A contractor must comply with meal service requirements as outlined in TDA CACFP Handbooks.

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DIVISION 10. DAY CARE HOMES

4 TAC §§25.91 - 25.96

The new §§25.91 - 25.96 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.91. Day Care Home Participation.

(a) In order for a day care home to be approved to participate in CACFP, a day care home sponsor must submit a correct and complete application packet as prescribed by TDA.

(b) A day care home sponsor must submit the required application packet to TDA by the 25th of the month in which the sponsor wants the day care home's participation to begin.

§25.92. Determination of Eligibility.

TDA will not approve a day care home to participate in CACFP before the latest date of the following:

- (1) the date of the provider's registration or license;
- (2) the date the sponsor conducts a pre-approval visit of the day care home;
- (3) the effective date of the Permanent Agreement Between Sponsoring Organization and Day Care Home(s);

(4) the latest date that the Permanent Agreement Between Sponsoring Organization and Day Care Home(s) is signed by the day care home or the sponsor;

(5) the date of participation assigned by TDA;

(6) the first day of the month in which TDA receives a complete and correct Permanent Agreement Between Sponsoring Organization and Day Care Home Provider(s) and Application Between Sponsoring Organization and Day Care Home; or

(7) the date a day care home enrolls a non-residential child for child care.

§25.93. Change of Sponsor.

(a) A day care home that is participating in CACFP under one sponsor can sign an agreement once each program year to participate with a different sponsor as prescribed by TDA CACFP Handbooks.

(b) A day care home can enter into an agreement with a different sponsor more than once during the program year only if:

(1) the day care home sends a letter to TDA requesting the transfer and explaining why there is good cause to transfer to a different sponsor; and

(2) TDA determines that good cause exists and approves the transfer.

(c) Good cause for transferring from the sponsorship of one sponsor to another during the program year is limited to either of the following conditions:

(1) A sponsor denies a provider access to the program.

(2) A sponsor reduces the level of benefit a provider receives under the program.

(3) Other good cause as determined by TDA.

(d) A day care home may not participate under more than one sponsor in any one month.

§25.94. Ineligibility for Fraud.

If a day care home has been found guilty of fraud, even if adjudication is deferred, the day care home's sponsoring organization must terminate the day care home's participation according to Division 18 of this subchapter (relating to Adverse Actions, Denials and Terminations).

§25.95. Limitations on Sponsorship.

(a) TDA may limit the number of day care homes that a contractor may sponsor.

(b) A contractor may submit a written request to sponsor additional day care homes. TDA will approve sponsorship of additional day care homes only if the contractor provides evidence of administrative and financial capability.

(c) TDA will notify the contractor in writing of all adjustments to the number of day care homes that may be sponsored.

§25.96. Additional Guidelines for Day Care Home Sponsors.

A contractor that sponsors day care homes must not allow any officer, agent, consultant, contractor, or any other employee to:

- (1) solicit donations or fees from providers;
- (2) require providers to engage in any kind of business on the sponsoring organization's behalf; or
- (3) accept gratuities, favors, or anything of monetary value from providers.

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DIVISION 11. START-UP AND EXPANSION FUNDS

4 TAC §25.101

The new §25.101 is proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.101. Start-up and Expansion Funds.

(a) Eligibility.

(1) Prospective sponsoring organizations of day care homes, participating sponsoring organizations of child care centers or outside-school-hours care centers, independent centers, and participating sponsoring organizations of less than 50 homes may apply once for start-up payments to develop or expand successful CACFP operations in day care homes.

(2) Participating sponsoring organizations of day care homes may apply for expansion payments to initiate or expand CACFP operations in day care homes in low-income or rural areas.

(3) Participating sponsoring organizations of day care homes may apply for expansion funds more than once provided 12 months or more have elapsed since satisfactorily completing a start-up or expansion payment agreement with TDA and the contractor proposes to expand into an area or areas different from those identified in previous start-up or expansion payment agreements.

(b) Application.

(1) A contractor must submit a completed application to TDA to be considered for start-up or expansion payments. TDA approves or denies applications for start-up and expansion payments according to 7 CFR §226.12(b), and this chapter.

(2) A contractor must contact TDA to request an application for start-up and expansion payments.

(3) TDA will notify an applicant of approval or denial of the application, in writing, no later than 30 days of TDA's receipt of a complete application.

(4) If an applicant submits an incomplete application, TDA will notify the applicant within 15 days of receipt of the application and provide technical assistance, as needed, to assist with completion of the application.

(5) Denial of an application for start-up or expansion payments may be appealed. All appeals shall be conducted in accordance with §§1.1000 - 1.1004 of this title (relating to Appeal Procedures for the CACFP).

(6) A contractor approved for start-up or expansion payments, shall enter into a written agreement with TDA.

(7) A contractor that breaches the written agreement with TDA may be required to repay all or part of the start-up or expansion funds.

(c) Issuance of Start-Up and Expansion Payments.

(1) TDA issues start-up and expansion payments according to 7 CFR §§226.2, 226.6, 226.7, 225.12, and written guidance from USDA.

(2) The amount of start-up or expansion payments issued to an eligible contractor shall be determined by the anticipated level of start-up or expansion costs incurred by the contractor and any alternate sources of income, as identified in the contractor's application. However, a payment shall not be issued for less than the determined anticipated administrative reimbursement for one month nor be greater than the determined anticipated reimbursement for two months. Any issued payment shall not exceed the following:

(A) Shall not be calculated for more than 50 day care homes;

(B) Start-up payments to a contractor with less than 50 day care homes under their jurisdiction may not exceed 50 day care homes including those homes under the contractor's jurisdiction at the time of application;

(C) Expansion payments may not exceed the product of 50 times the dollar amount identified in 7 CFR §226.12(a)(i).

(d) Use of Start-Up and Expansion Funds.

(1) Start-up and expansion payments must be used according to 7 CFR §226.2 and §226.12, written guidance from USDA and the written agreement with TDA.

(2) Start-up and expansion payments may not be used to recruit day care homes that are already participating in CACFP under an approved sponsor.

(e) Review and Monitoring Requirements.

(1) Upon expiration of the time allotted for use of start-up or expansion funds, the contractor must provide to TDA documentation of activities performed and costs incurred under terms of the written agreement. If the contractor has not made every reasonable effort to carry out the activities specified in the written agreement, the contractor must repay all or part of the payments, as determined by TDA.

(2) TDA may monitor the contractor's start-up or expansion activities during or after the expiration of the agreement and may do so by announced or unannounced visits.

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DIVISION 12. ADVANCES

4 TAC §§25.111 - 25.115

The new §§25.111 - 25.115 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.111. Advance Payments.

TDA issues and monitors advance payments to eligible contractors according to 7 CFR §§226.2, 226.6, 226.7, 226.10, and 226.16.

§25.112. Issuance of Advances.

Advance payments to contractors are based on TDA's estimate of the amount of valid monthly claims for reimbursement to be submitted by the contractor.

§25.113. Retroactive Advances.

TDA will not issue retroactive advances.

§25.114. Availability of Advance Funding.

If USDA does not provide sufficient funds for TDA to pay both advance payments and claims for reimbursement in full, TDA will pay claims for reimbursement only.

§25.115. Recoupment of Advance Payments.

(a) TDA may recoup advance payments from the current or subsequent claims for reimbursement.

(b) TDA may demand immediate repayment in full.

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DIVISION 13. COMMODITIES AND CASH-IN-LIEU ASSISTANCE

4 TAC §§25.121 - 25.127

The new §§25.121 - 25.127 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.121. Commodity Assistance.

TDA provides USDA-donated foods or cash-in-lieu of commodities according to 7 CFR §§226.5, 226.6, 226.15, and 226.20.

§25.122. Commodity Assistance vs. Cash-in-lieu.

TDA conducts an annual survey to determine each contractor's preference according to 7 CFR §226.6. If the majority chooses cash-in-lieu of commodities, then TDA issues cash-in-lieu of commodities to all eligible contractors.

§25.123. Commodity Distribution.

A day care home sponsor must distribute the bonus commodities based on the number of children the day care home keeps.

§25.124. Distribution Costs.

A day care home sponsor that chooses to distribute bonus commodities can pass on to the day care homes any costs it may incur for distributing bonus commodities.

§25.125. Administrative Expenses.

A sponsoring organization may include administrative costs associated with distribution of commodities in CACFP costs, except for those administrative costs which have been passed on to the day care home per §25.124 of this division (relating to Distribution Costs).

§25.126. Charging Distribution Costs to Day Care Homes.

Day care home sponsoring organizations must:

(1) submit a detailed bonus cost allocation plan to TDA that TDA must approve; and

(2) obtain written consent from the day care home.

§25.127. Right to Refuse Commodities.

Facilities and centers may choose to refuse commodities offered by sponsoring organizations.

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

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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DIVISION 14. REIMBURSEMENT

4 TAC §§25.131 - 25.143

The new §§25.131 - 25.143 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.131. Authority to Reimburse Contractors for CACFP Costs.

TDA reimburses a contractor according to 7 CFR §§226.2, 226.4, 226.6, 226.7, 226.9 - 226.19a, and 226.23; 7 CFR Part 3015; and §17(a)(2)(B) of the National School Lunch Act (42 U.S.C. §1766), as amended.

§25.132. Contractor Reimbursement to Facilities.

Contractors must reimburse facilities according to 7 CFR §§226.2, 226.4, 226.6, 226.7, 226.9 - 226.19a, and 226.23; 7 CFR Part 3015; and §17(a)(2)(B) of the National School Lunch Act (42 U.S.C. §1766), as amended.

§25.133. Reimbursement Rates.

TDA assigns reimbursement rates for contractors according to the option in 7 CFR §226.9(b)(3).

§25.134. Reimbursement Options.

TDA reimburses contractors according to the options in 7 CFR §226.9(c)(1). TDA does not use the option described in 7 CFR §226.9(d).

§25.135. Reimbursement Computation.

TDA computes reimbursement according to 7 CFR 226.13 and the option in 7 CFR §226.11(c)(3).

§25.136. Title III Benefits.

Title III benefits include all benefits provided under Part C of the Older Americans Act (OAA), including commodities (or cash-in-lieu of commodities) authorized by the OAA and provided by the U.S. Department of Health and Human Services.

§25.137. Reimbursement for Title III Meals.

(a) Adult day care centers and contractors must ensure that the meals for which they claim reimbursement are not supported by Title III of the Older Americans Act.

(b) If a contractor uses a food service management company, the contractor must ensure that neither Title III funds nor commodities are used in the meals prepared for use in CACFP.

§25.138. Reimbursement for Meals and Snacks.

TDA will only reimburse contractors for meal types and meal service days as approved in the contractor's application.

§25.139. Claim Filing.

(a) A contractor must ensure that claims for reimbursement are filed in accordance with TDA procedures outlined in TDA CACFP Handbooks.

(b) TDA will not pay a claim that is received or postmarked after the deadline unless USDA finds that good cause beyond the contractor's control delayed the submission of the claim.

§25.140. Late Claims.

(a) TDA will not pay a claim that was filed after the deadline established in TDA CACFP Handbooks unless the contractor is eligible for a one-time exception or can demonstrate good cause.

(b) TDA will process one-time exceptions and requests for good cause exceptions as established in TDA CACFP Handbooks.

(c) A contractor may choose not to use their one-time exception or submit a request for payment of a late claim based on good cause.

§25.141. Second Meals.

A contractor may only serve and claim second meals in accordance with 7 CFR §226.20(j).

§25.142. Family Style Meals.

Contractors who serve family style meals may not claim reimbursement for second meals.

§25.143. Ineligible Children.

A day care home may not claim reimbursement for meals served to the child of another day care home provider if both participate in CACFP unless the provider's own child can be considered a nonresidential child by another day care home provider for the purpose of claiming reimbursement. This can occur only if the following conditions are met:

(1) The child is enrolled for child care at the substitute facility.

(2) The provider for whom substitute care is being provided does not claim reimbursement for any meals served during the period of substitute care.

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

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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DIVISION 15. OVERPAYMENTS

4 TAC §25.151, §25.152

The new §25.151 and §25.152 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.151. Management of Overpayments.

TDA manages overpayment according to 7 CFR §§226.6 - 226.8, 226.10, and 226.12 - 226.14.

§25.152. Use of CACFP Funds to Recruit Day Care Homes.

A day care home sponsor must not use CACFP funds to recruit day care homes that are already participating in CACFP under an approved sponsor.

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

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Dolores Alvarado Hibbs

General Counsel

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DIVISION 16. REVIEWS AND MONITORING

4 TAC §§25.161, §25.162

The new §§25.161 and §25.162 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.161. Monitoring Visits to CACFP Contractors.

(a) TDA conducts program reviews and monitoring according to 7 CFR §226.6(m)(6) and TDA CACFP Handbooks.

(b) Sponsors must monitor their facilities according to 7 CFR §226.16 and TDA CACFP Handbooks.

§25.162. Monitoring Purchased Meals Contracts.

Each contractor and/or facility that contracts for purchased meals must monitor the vendor according to 7 CFR §226.6(i), TDA CACFP Handbooks, and standard contract provisions as approved by TDA.

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

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For further information, please call: (512) 463-4075

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DIVISION 17. AUDITS

4 TAC §§25.171 - 25.174

The new §§25.171 - 25.174 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.171. Audits of Contractors and Sponsored Facilities.

All contractors and sponsored facilities participating in CACFP are subject to audit.

(1) Contractors and sponsored facilities are subject to audit requirements according to 7 CFR §226.7 and §226.8; 7 CFR Parts 3015 and 3052; and TDA CACFP Handbooks.

(2) A contractor participating in CACFP as a private non-profit organization or a public entity is subject to the single audit requirements according to 7 CFR §226.8; 7 CFR Part 3052; and TDA CACFP Handbooks. A contractor that is a military installation is not subject to the single-audit requirements.

(3) A contractor participating in CACFP as a for-profit organization is subject to audit requirements according to 7 CFR §226.8 and TDA CACFP Handbooks.

§25.172. Audit Acceptability.

The contractor has not fulfilled the audit requirement until TDA determines that the audit is acceptable:

(1) according to the requirements of the Single Audit Act; 7 CFR Part 3052 for non-profit organizations or public entities; or

(2) according to 7 CFR §226.8 and TDA Handbooks for for-profit organizations.

§25.173. Notification to Contractors.

TDA will notify the contractor in writing that it is subject to audit requirements in accordance with 7 CFR §226.8; 7 CFR Part 3052; and TDA CACFP Handbooks. The notification includes the date by which the contractor must submit an acceptable audit to TDA and also informs the contractor that failure to submit the audit to TDA by the required due date will result in adverse action, up to and including placement into the Serious Deficiency Process, termination of its agreement, and placement of the organization and each responsible principal on the National Disqualified List.

§25.174. Reimbursement for Costs.

TDA will reimburse contractors for eligible audit expenses according to 7 CFR §226.8(b) and TDA CACFP Handbooks.

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

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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DIVISION 18. ADVERSE ACTIONS, DENIALS AND TERMINATIONS

4 TAC §§25.181 - 25.184

The new §§25.181 - 25.184 are proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.181. Investigations.

TDA will investigate and resolve program deficiencies, program irregularities, and evidence of violations of criminal law or civil fraud statutes according to 7 CFR §§226.6(n), 226.8, 226.10, and 226.14.

§25.182. Adverse Actions.

TDA will impose adverse actions against any contractor for failure to comply with CACFP requirements in accordance with 7 CFR §226.6, TDA CACFP Handbooks, and this division, up to and including:

- (1) placement into the Serious Deficiency Process;
- (2) termination;
- (3) debarment; and
- (4) placement on the National disqualified list.

§25.183. Denial of Applications and Termination of Agreements.

TDA denies applications and terminates agreements, in whole or in part, according to 7 CFR §§226.6, 226.14 - 226.19a, 226.23, and 226.25; 7 CFR Part 3015; and §17(a)(2)(B) of the National School Lunch Act (42 U.S.C. §1766), as amended; and TDA CACFP Handbooks.

§25.184. Criteria for Sponsoring Organizations.

A sponsor denies or terminates agreements with a day care home or facility according to 7 CFR §226.6 and §226.16, and TDA CACFP Handbooks.

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

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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DIVISION 19. APPEALS

4 TAC §25.191

The new §25.191 is proposed under the Texas Agriculture Code, §12.0025, authorizing TDA to administer CACFP; and §12.016, authorizing TDA to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.191. Conduct of Appeals.

TDA conducts appeals according to 7 CFR §226.6 and §226.16; and §17(d) of the National School Lunch Act (42 U.S.C. §1766), as amended; and §§1.1000 - 1.1004 of this title (relating to Appeal Procedures for the CACFP), and §§1.1050 - 1.1053 of this title (relating to Administrative Hearing Procedures for Conducting the Appeals of the Food and Nutrition Programs).

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

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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TITLE 10. COMMUNITY DEVELOPMENT

PART 6. TEXAS DEPARTMENT OF RURAL AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.7

The Texas Department of Rural Affairs (TDRA) proposes amendments to §255.7, concerning the Texas Capital Fund (TCF). On October 7, 2010, the TDRA Board of Directors approved the publication of this rule proposal for comment. The proposed amendments to §255.7(a) will allow the Texas Department of Agriculture (TDA) to make larger Texas Capital Fund awards when there is an increased level of job creation/retention and capital investment; and make additional Main Street Program and Downtown Revitalization Program awards beyond the annual allocated amounts, when there are unreserved/uncommitted funds remaining after the end of the calendar year. Other proposed amendments to subsection (a) change the leverage ratios for TCF requests and correct grammatical errors. The proposed amendments to §255.7(f) more clearly describe the need to use information from the most recent decennial census data in various infrastructure and real estate scoring categories. The proposed amendment to §255.7(i) removes the requirement that first year Main Street cities get Texas Historical Commission approval before being eligible to apply; and corrects the economic development tax reference. The proposed amendment to §255.7(l) corrects the economic development tax reference; and more clearly describes the need to use information from the most recent decennial census data in various Downtown Revitalization Program scoring categories. The proposed amendments to §255.7(d), (e), (g), (h), (k), and (m) are made for purposes of clarification.

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

Mr. Stone also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the section will be the equitable allocation of CDBG non-entitlement area funds to eligible units of general local government in Texas. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael West, Coordinator, Rural Economic Development Financial Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

The amendments to §255.7 are proposed under the Texas Government Code §487.052, which provides the Texas Department

of Rural Affairs with the authority to adopt rules and administrative procedures to carry out the provisions of Chapter 487 of the Texas Government Code.

The Texas Government Code, Chapter 487, is affected by the proposal.

§255.7. *Texas Capital Fund.*

(a) General Provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. Under the main street improvements and downtown revitalization programs, projects must qualify to meet the national program objective of aiding in the prevention and/or ~~or~~ elimination of slum or blighted areas.

(1) For an activity that creates/retains jobs, the city/county and business must document that at least 51% of the jobs are or will be held by low and moderate-income ~~moderate income~~ persons. For purposes of determining whether a job is or will be held by a low or moderate-income ~~moderate income~~ person or not, the following options are available.

(A) (No change.)

(B) The person(s) employed by the business for created/retained jobs may be presumed to be a low or moderate-income ~~moderate income~~ person if the person resides within a census tract or block numbering area that either is part of a Federally-designated Empowerment Zone or Enterprise Community or the person(s) reside in a census tract or block numbering area that meets the following criteria:

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

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

(4) The leverage ratio between all funding sources to the Texas Capital Fund (TCF) request may not be less than 1:1 for awards of \$750,000 or less; 2:1 for awards of \$750,100 to \$1,000,000; 3:1 for awards of \$1,000,100 to \$1,500,000; and 4:1 for awards of \$1,500,100 to \$2,000,000; and 5:1 for awards of \$2,000,100 to \$2,500,000 ~~[\$750,000 to \$1,000,000]~~. The main street and downtown revitalization programs require a minimum 0.1:1 match.

(5) In order for an applicant to be eligible, the cost per job calculation must not exceed \$25,000 for awards of \$750,000 or less; \$20,000 ~~and \$10,000~~ for awards of \$750,100 ~~[\$750,001]~~ to \$1,000,000; \$15,000 for awards of \$1,000,100 to \$1,500,000; \$10,000 for awards of \$1,500,100 to \$2,000,000; and \$5,000 for awards of \$2,000,100 to \$2,500,000. These requirements do not apply to the main street program or the downtown revitalization program.

(6) No financial assistance will be provided to projects involved in the relocation of any industrial or commercial plant, facility or operation, from one state to another state, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs. No assistance will be provided for projects intended to facilitate the relocation of any industrial or commercial plant, facility or operation from one unit of general local government within Texas to another unit of general local government within Texas unless a 10% net gain of jobs will occur and one of the following requirements has been met prior to submitting an application for consideration under this section:

(A) (No change.)

(B) Local government notification with no response. Local government must provide written documentation that a letter has been mailed (by registered mail) to the local government from which the business is relocating, notifying it of the relocation. The local government, upon receipt of the notification, then has 30 days

to object to the relocation, in writing, to the Texas Department of Agriculture (TDA) before the TCF application can be considered. A written objection to a relocation from a local government will prevent the application from being considered.

(7) ~~[The]~~ TDA will not consider any application for funding which will result in the provision of assistance for an economic development project where the applicant and one or more other cities or counties are competing to provide economic development project funds to that project.

(8) ~~[The]~~ TDA will not consider any application for funding in which the business or principals to be assisted there under ~~thereunder~~, or a business that shares common principals has filed under the Federal Bankruptcy Code, and the matter is in the process of being adjudicated or in which such business has been adjudicated bankrupt. On a case by case basis, extenuating circumstances will be evaluated.

(9) ~~[The]~~ TDA may consider applications in the real estate and infrastructure improvement programs that provide funding to benefit a maximum of three (3) businesses.

(10) ~~[The]~~ TDA will consider a project proposed by a city that is in the city's corporate limits or its extraterritorial jurisdiction, and will consider a project proposed by a county that is in the unincorporated area of the county. Counties may not sponsor an application for a business located in a city, if that business is currently participating in a TCF project with that city. TDA may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction, but within the county or contiguous counties not to exceed five (5) miles beyond the city's extra-territorial jurisdiction that the city is located in and will consider a project proposed by a county that is within an incorporated city, if the applicant demonstrates that the project is appropriate to meet its needs, if the applicant has the legal authority to engage in such a project and if at least 51% of the principal beneficiaries reside within the applicant's jurisdiction.

(11) A TCF contractor must satisfactorily close out a contract in support of a specific business, downtown revitalization project, or main street project in order to be eligible to receive additional funds under the TCF for the same business, downtown project, or main street city. The contractor is eligible for an additional TCF award in support of a specific business, provided that the prerequisite program income choice has been selected, if the assisted business is not in the designated main street or downtown business district geographic area, and the assisted business will create or retain jobs to meet the national program objective.

(12) ~~[The]~~ TDA will not consider or accept an application for funding from a community, in support of a business project that is currently receiving TCF assistance through that same community.

(13) The minimum and maximum award amount that may be requested/awarded for a project funded under the TCF infrastructure or real estate development programs, regardless of whether the application is submitted by a single applicant or jointly by two or more eligible jurisdictions is addressed here. Award amounts are directly related to the number of jobs to be created/retained and the level of matching funds in a project. Projects that will result in a significantly increased level of jobs created/retained and a significant increase in the matching capital expenditures may be eligible for a higher award amount, commonly referred to as jumbo awards. TCF monies are not specifically reserved for projects that could receive the increased maximum award amount, however, jumbo awards may not exceed \$5 ~~[\$2]~~ million in total awards during the program year. Additionally, no more than \$2.5 ~~[\$1]~~ million in jumbo awards will be approved in any round. The

maximum amount for a jumbo award is \$2.5 [~~\$4~~] million and the minimum award amount is \$750,100. The maximum amount for a normal award is \$750,000 and the minimum award amount is \$50,000. These amounts are the maximum funding levels. The program can fund only the actual, allowable, and reasonable costs of the proposed project, and may not exceed these amounts. All projects awarded under the TCF program are subject to final negotiation between TDA and the applicant regarding the final award amount, but at no time will the award exceed the amount originally requested in the application.

(14) TDA will allocate the available funds for the year, less \$600,000 for the main street program, and \$1,200,000 for the downtown revitalization program, by awarding up to 70% of the annual allocation plus any deobligated and program income funds available during the first half of the calendar year. All remaining funds may be allocated to applications received during the second half of the calendar year, including any unfunded applications received during the first half of the calendar year. Final funding decisions may be made on a monthly basis. If excess/unreserved program funds are determined to be available after the end of the calendar year, TDA may award up to three (3) additional Main Street awards, not to exceed a total of \$450,000, and up to four (4) additional Downtown Revitalization awards, not to exceed a total of \$600,000.

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

(d) Repayment Requirements. TCF awards for real estate improvements and private infrastructure require repayment. Infrastructure payments and real estate lease payments are intended to be paid by the benefiting business to the applicant/contractor and constitute program income. The repayment is structured as follows:

(1) Real estate improvements. These improvements are intended to be owned by the applicant and leased to the business. Real estate improvements require full repayment. At a minimum, the lease agreement with the business must be for a minimum three-year [~~three year~~] period or until the TCF contract between the applicant and TDA has been satisfactorily closed (whichever is longer). A minimum monthly lease payment will be [~~required to be~~] collected from the original business and any subsequent business which occupies the real estate funded by the TCF, which equates to the principal funded by the TCF divided over a maximum 20-year [~~20 year~~] period (240 months), or until the entire principal amount has been recaptured. The repayment term is determined by TDA; for smaller award amounts the repayment term will be less than [~~and may not be for~~] the maximum of 20 years [~~for smaller award amounts~~]. There is no interest expense associated with an award. Payments begin the first day of the third month following the construction completion date or acquisition date. Payments received more than 15 calendar days after the due date [~~or more late~~] will be assessed a late charge/fee of 5% of the payment amount. After the contract between the applicant and the Department is satisfactorily closed, the applicant will be responsible for continuing to collect the minimum lease payments only if a business (any business) occupies the real estate. The lease agreement may contain a purchase option, if the option is effective after a minimum five-year [~~five year~~] ownership requirement and if the purchase price equals (at a minimum) the remaining principal amount originally funded by the TCF which has not been recaptured.

(2) Infrastructure improvements.

(A) Private Infrastructure is infrastructure that will be located on the business's site or on adjacent and/or contiguous property, to the site, that is owned by the business, principals, or related entities. All funds for private infrastructure improvements require full repayment. Terms for repayment will [~~be interest free, with repayment~~] not [~~to~~] exceed 20 years and must [~~are intended to~~] be repaid by the busi-

ness through a repayment agreement, interest free. Payments begin the first day of the third month following the construction completion date. Payments received more than 15 calendar days after the due date [~~or more late~~] will be assessed a late charge/fee of 5% of the payment amount.

(B) Public Infrastructure is infrastructure located on public property or right-of-ways and easements granted by entities unrelated to the business or its owners and not included or identified as private infrastructure. Funds [~~All funds~~] for public infrastructure do not require repayment.

(C) Rail improvements on private property require full repayment. Terms for repayment will [~~be no interest, with repayment~~] not [~~to~~] exceed 20 years and must [~~are intended to~~] be repaid by the business through a repayment agreement, interest free. Payments begin the first day of the third month following the construction completion date. Payments received more than 15 calendar days after the due date [~~or more late~~] will be assessed a late charge/fee of 5% of the payment amount.

(e) Application process for the infrastructure and real estate programs. TDA will accept applications [~~at any time~~] during normal business hours. Applications are reviewed after they have been competitively scored. Based upon the scoring, TDA staff makes recommendation for award to the TDA Commissioner. The TDA Commissioner makes the final decision. The application and the selection procedures consist of the following steps:

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

(3) TDA staff will review the applications on a monthly basis for eligibility and completeness and list them in descending order based on the scoring. The communities and businesses of those applications being considered for funding will be notified and given 30 [~~business~~] days to provide additional information and supporting documentation. Applicants and/or businesses that fail to provide requested information or supporting documentation may be determined to be incomplete and the application will no longer be considered for funding. In the event staff determines that an application contains activities that are ineligible for funding, the application may be restructured by staff or returned to the applicant to be amended and resubmitted. Eligible applications not selected for further consideration may be held over for a one-year period and may be re-evaluated and considered for funding.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

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

(C) Whether the use of TCF funds is appropriate to carry out the project proposed in the application;

(D) (No change.)

(E) Whether there is evidence that the permanent jobs created or retained will primarily benefit low and moderate-income [~~low and moderate income~~] persons; and

(F) (No change.)

(5) Upon TDA staff determination that an application supports a feasible and eligible project, staff [~~normally~~] will schedule a visit to the applicant jurisdiction to discuss the project and program rules with the chief elected official (or designee), business representative(s), and [~~to~~] visit the project site.

(6) - (8) (No change.)

(9) The contract is drafted and then reviewed by program management and TDA's legal division prior to two copies being mailed

to award recipient. Upon receipt, the award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the TDA Commissioner and then a signed [single] copy is returned to contractor.

(f) Scoring criteria for the infrastructure and real estate programs. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility in descending order based on the scoring criteria. There are a total of 100 points possible.

(1) In the event of a tie score and insufficient funds to approve all applications, the [following tie breaker criteria will be used.]

[(A)] [The] tying applications are ranked from lowest to highest based on the job impact. Thus, preference is given to the applicant with the greater job creation/retention impact, and the total number of jobs proposed to be created and/or retained in the application.

[(B)] If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on the number of jobs proposed to be created and/or retained in the application. Thus, preference is then given to the applicant with the greater number of jobs.]

(2) Community Need (maximum 40 points). Measures the economic distress of the applicant community.

(A) (No change.)

(B) Poverty (maximum 10 points). Awarded if the applicant's annual county poverty rate for individuals (from the most recent decennial census data [2000 Census]) is higher than the annual state rate for individuals (from the most recent decennial census data [2000 Census]), indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average of 15.4%; and score 10 points if this figure exceeds the state average of 17.7%.

(C) Previous Contracts (Maximum 10 points). Awarded [Award] 5 points if the community has been awarded a TCF [one] contract within the [in the current calendar year or] preceding two (2) calendar years. Awarded [Award] 10 points if the community has been awarded zero contracts in the current calendar year or the preceding two (2) calendar years.

(D) Community Population/Size (maximum 10 points). Points are awarded to applying small cities and counties using the most recent decennial census [2000 Census] data. For cities: score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,000. For counties: score 5 points if the county population is less than 35,000 and score 5 additional points if the county population is less than 15,000. Community population figures are net of the population held in adult or juvenile correctional institutions/facilities, as shown in the most recent decennial census data.

(E) (No change.)

(3) Jobs (maximum 35 points).

(A) Job Impact (maximum 15 points). Awarded by taking the business' total job commitment, created and retained, and dividing by applicant's most recent decennial census data [2000] unadjusted population. This equals the job impact ratio. Score 5 points if this figure exceeds .00485; score 10 points if this figure exceeds .00969; and score 15 points if this figure exceeds .01455. County applicants should deduct the most recent decennial census data [2000 census] population amounts for all incorporated cities, except in the case where the county is sponsoring an application for a business that is or will be located in

an incorporated city. In this case the city's population would be used, rather than the county's. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown in the most recent decennial [2000] census data.

(B) - (C) (No change.)

(4) Business/Economics Emphasis (maximum 25 points).

(A) (No change.)

(B) Small/HUB businesses (maximum 5 Points). Awarded if each (or the [each/the] benefiting Business in a "multiple business" application) employs less than 100 employees for all locations both in and out of state, or has been certified by the Comptroller of Public Accounts as a Historically Underutilized Business (HUB). This number is determined by the business and any related entities, such as parent companies, subsidiaries and common ownership. Common ownership is considered 51% or more of the same owners.

(g) Equity requirement by the business. All businesses are required to make financial contributions to the proposed project. A minimum cash injection of [a minimum of] 2.5% of the total project cost is required. Total equity participation must be no less than 10% of the total project cost. This equity participation may be in the form of cash and/or net equity value in fixed assets utilized within the proposed project. A minimum equity injection of [a] 33% [equity injection] (of the total projects costs) in the form of cash and/or net equity value in fixed assets is required, if the business has been operating for less than three (3) years and is accessing the R/E program. TDA staff will consider a business to have been operating for at least three years if:

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

(h) Application process for the main street program. The application and selection procedures consist of the following steps:

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

(3) TDA staff will then review the four (4) highest ranking applications for eligibility and completeness in descending order based on the scoring. In the event that TDA [the] staff determines the application contains activities that are ineligible for funding, the application will be restructured or considered ineligible. The applicant will be notified of any deficiencies and given ten (10) business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature (e.g., lack of financial commitments) may be declined. In the [any] event a determination is made that an application contains activities that are ineligible for funding, the application will be restructured or declined and the application materials will be retained by TDA. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given to an application previously submitted and not funded.

(4) (No change.)

(5) Upon TDA staff determination that an application supports a feasible and eligible project, an on-site visit to the four highest scoring applicants may be conducted by TDA staff to discuss the project and program rules with the chief elected official₅, as applicable, or their designee, as applicable, and to visit the Main Street area.

(6) - (7) (No change.)

(8) The contract is drafted and then reviewed by program management and TDA's legal division prior to two copies being mailed to award recipient. Upon receipt, award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the Commissioner or the Commissioner's designee and then a signed [single] copy is returned to contractor.

(i) Scoring criteria for the main street program. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility and placed in descending order based on the scoring criteria. There is a total of 100 points possible.

(1) (No change.)

(2) Project Feasibility (maximum 50 points). Measures the applicant's potential for a successful project. Each applicant must submit detailed and complete support documentation for each category. Compliance with the ten (10) criteria for Main Street Recognition is required. First year Main Street Cities ~~[must receive prior approval from THC to apply and]~~ must submit the Main Street Criteria for Recognition Survey with the TCF application. The criteria include the following:

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

(E) Economic Development Consideration--(5 points). Five points will be awarded if the city has an [the] economic development sales tax (Type A, Type B [4A, 4B] or both).

(F) Main Street Program Participation--(5 points). Points are awarded on the applicant's continuous participation in the Main Street program as follows: For every two (2) years of continuous participation in the Main Street program, the applicant will be awarded 1 point. Points will only be awarded for every two (2) consecutive years and will not be broken into half points for increments other than two-year increments. If a city leaves the Main Street program and then returns at a later date, "continuous participation" will be calculated from the date that they returned to the program. Applicants will receive the maximum amount of points if they have participated in the program for ten (10) continuous years.

(3) (No change.)

(j) (No change.)

(k) Application process for the downtown revitalization program. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to the TDA Commissioner or the Commissioner's designee. TDA Commissioner makes the final decision. The application and selection procedures consist of the following steps:

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

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) (No change.)

(B) Whether the use of TCF funds is appropriate to carry out the project proposed in the application;

(C) - (D) (No change.)

(l) Scoring criteria for the downtown revitalization program. There are a total of 90 points.

(1) (No change.)

(2) Maximum 90 points.

(A) (No change.)

(B) Economic Development Consideration--(5 points) awarded if the city has passed the economic development sales tax (Type A, Type B [4A, 4B] or both).

(C) Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded a TCF ~~[one]~~ contract during the [in the current calendar year or] preceding two (2) calendar years.

Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding two (2) calendar years.

(D) Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less, using the most recent decennial [2000] census data. Score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the most recent decennial [2000] census data.

(E) - (I) (No change.)

(J) Sidewalks and ADA Compliance Goals--(~~maximum~~ 10 points ~~[total]~~). Five points awarded if a minimum of 50% of the requested funds will be used for sidewalk and/or ADA compliance activities; and 10 points awarded if a minimum of 70% of the requested funds will be used for sidewalk and/or ADA compliance activities.

(m) Threshold criteria for the downtown revitalization program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) of this subsection.

(1) The national objective of aiding in the prevention or elimination of slum [Slum] or blight [Blight] on a spot basis. To show how this objective will be met, the applicant must:

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

(2) (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 October 26, 2010.

TRD-201006097

Charles S. (Charlie) Stone

Executive Director

Texas Department of Rural Affairs

Earliest possible date of adoption: December 12, 2010

For further information, please call: (512) 936-6734



TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §361.1, which provides the meaning of words and terms used in the Plumbing License Law and Board Rules.

The amendments to §361.1 are proposed in response to the passage of Senate Bill (SB) 1410 and SB 1354, 81st Regular Legislative Session. The proposed amendments reflect revisions made to the Plumbing License Law by SB 1410, including a definition of Responsible Master Plumber and requirements for persons licensed, endorsed and registered by the Board to perform

plumbing work under the general supervision of a Responsible Master Plumber.

The proposed amendments also reflect the language of SB 1410 and SB 1354 by adding language to allow a person to hold a Plumbing Inspector license if the person is employed or contracted by a state agency.

The amendments include language from SB 1354 which require a Field Representative of the Board to be licensed by the Board as a plumber.

The proposed amendments add the terms "distribute" and "circulate" to the definition of "Plumbing" and "design" to the definition of "Master Plumber," as required by SB 1354.

As required by SB 1410, the proposed amendments remove the term "who secures permits for plumbing work" from the definition of "Master Plumber," because SB 1410 moved such authority to a "Responsible Master Plumber."

The proposed amendments reflect requirements of SB 1354 for mandatory annual training, which is equivalent to Continuing Professional Education, for those who wish to renew a Drain Cleaner, Drain Cleaner-Restricted Registrant or Residential Utilities Installer registration.

Economic Impact Statement and Regulatory Flexibility Analysis

Texas Government Code §2006.002, as amended by the 80th Legislature, House Bill (HB) 3430, requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses. The proposed amendments to §365.1 will have no adverse economic impact on small businesses.

Robert L. Maxwell, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal impact on state and local government as well as small businesses and persons required to comply with these amendments.

Mr. Maxwell also has determined that each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a clear understanding of the words and terms used in the Plumbing License Law and Board Rules. Public health and safety will benefit from plumbing performed by individuals who follow clear standards.

Comments on the proposed amendments may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §361.1 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 81st Legislature (Plumbing License Law or Law), §§1301.251, 1301.002, 1301.203, 1301.405 and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.002 provides definitions of licenses, endorsements and registrations issued by the Board. Section 1301.203 describes a Board Field Representative and §1301.405 requires annual training, which is equivalent to Continuing Professional Education, for the renewal of certain registrations. The amendments to §361.1 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, HB 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

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

§361.1. *Definitions.*

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

(1) Act--The Plumbing License Law, Title 8, Chapter 1301, Occupations Code, as amended.

(2) Administrative Act--The Administrative Procedure Act, the Texas Government Code, §2001.001, et seq, as amended.

(3) Administrator--The Board-appointed executive director of all Board staff.

(4) Adopted Plumbing Code--A plumbing code, including a fuel gas code adopted by the Board or a political subdivision, including any city, town, village, municipality, public water system, municipal utility district, in compliance with §1301.255 and §1301.551 of the Plumbing License Law.

(5) Advisory Committee--A Board appointed committee subject to §1301.258 of the Plumbing License Law, §361.12 of these rules and Chapter 2110 of the Government Code, of which the primary function is to advise the Board.

(6) Appliance Connection--An appliance connection procedure using only a code approved appliance connector that does not require cutting into or altering the existing plumbing system.

(7) Applicant--An individual seeking to obtain a License, Registration or Endorsement.

(8) Board--The Texas State Board of Plumbing Examiners.

(9) Board Member--An individual appointed by the governor and confirmed by the senate to serve on the Board.

(10) Building Sewer--The part of the sanitary drainage system outside of the building, which extends from the end of the building drain to a public sewer, private sewer, private sewage disposal system, or other point of sewage disposal.

(11) Certificate of Insurance--a form submitted to the Board certifying that the Responsible Master Plumber carries insurance coverage as specified in §1301.522 of the Plumbing License Law and §367.3 of this title (relating to Requirements for Plumbing Companies, Responsible Master Plumbers; Certificate of Insurance) [these Rules].

(12) Chief Examiner--an employee of the Board who, under the direction of the Administrator, coordinates and supervises the activities of the Board examinations and registrations.

(13) Chief Field Representative--the Director of Enforcement who is an employee of the Board who meets the definition of "Field Representative" and, under the direction of the Executive Director, coordinates and supervises the activities of the Field Representatives.

(14) Cleanout--A fitting, other than a p-trap, approved by the adopted plumbing code and designed to be installed in a sanitary drainage system to allow easy access for cleaning the sanitary drainage system.

(15) Code-Approved Appliance Connector--A semi-rigid or flexible assembly of tube and fittings approved by the adopted plumbing code and designed for connecting an appliance to the existing plumbing system without cutting into or altering the existing plumbing system.

(16) Code Approved Existing Opening--For the purposes of drain cleaning activities described in §1301.002(3) of the Plumbing License Law, a code approved existing opening is any existing cleanout fitting, inlet of any p-trap or fixture, or vent terminating into the atmosphere that has been approved and installed in accordance with the adopted plumbing code.

(17) Complaint--A written charge alleging a violation of state law, Board rules or orders, local codes or ordinances, or standards of competency; or the presence of fraud, false information, or error in the attempt to obtain a License, Registration or Endorsement.

(18) Contested Case--A proceeding, including but not limited to rulemaking, licensing and registering, in which the agency determines the legal right, duties, and privileges of a party after allowing an opportunity for adjudicative hearing of the case.

(19) Continuing Professional Education--Board-approved courses/programs required for a licensee to renew his or her License, Registration and/or Endorsement.

(20) Direct Supervision--

(A) The on-the-job oversight and direction of a Registered Plumber's Apprentice performing plumbing work by a licensed plumber who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(i) that the plumbing materials for the job are properly prepared prior to assembly according to the material manufacturers recommendations and the requirements of the adopted plumbing code; and

(ii) that the plumbing work for the job is properly installed to protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(B) The on-the-job oversight and direction by a licensed Plumbing Inspector of an individual training to qualify for the Plumbing Inspector Examination.

(C) For plumbing work performed only in the construction of a new one-family or two-family dwelling in an unincorporated area of the state, a Responsible Master Plumber is not required to provide for the continuous or uninterrupted on-the-job oversight of a Registered Plumber's Apprentice's work by a licensed plumber, however, the Responsible Master Plumber must:

(i) provide for the training and management of the Registered Plumber's Apprentice by a licensed plumber;

(ii) provide for the review and inspection of the Registered Plumber's Apprentice's work by a licensed plumber to ensure compliance with subparagraph (A)(i) and (ii) of this paragraph; and

(iii) upon request by the Board, provide the name and plumber's license number of the licensed plumber who is providing on-the-job training and management of the Registered Plumber's Apprentice and who is reviewing and inspecting the Registered Plumber's Apprentice's work on the job, or the name and plumber's license number of the licensed plumber who trained and managed the Registered Plumber's Apprentice and who reviewed and inspected the Registered Plumber's Apprentice's work on a job.

(21) Drain Cleaner--An individual who has completed at least 4,000 hours working under the supervision of a Responsible Master Plumber as a registered Drain Cleaner-Restricted Registrant, who has fulfilled the requirements of and is registered with the Board, and who installs cleanouts and removes and resets p-traps to eliminate obstructions in building drains and sewers.

(22) Drain Cleaner-Restricted Registrant--An individual who has worked as a registered Plumber's Apprentice under the supervision of a Responsible Master Plumber, who has fulfilled the requirements of and is registered with the Board, and who clears obstructions in sewer and drain lines through any code-approved existing opening.

(23) Endorsement--a certification issued by the Board in addition to the Master or Journeyman Plumber License.

(24) Field Representative--for the purposes of these sections [Rules],

(A) "Field Representative" means an employee of the Board who is:

(i) knowledgeable of this Act and of municipal ordinances relating to plumbing;

(ii) qualified by experience and training in good plumbing practice and compliance with this Act;

(iii) designated by the Board to assist in the enforcement of this Act and rules adopted under this Act; and[-]

(iv) licensed by the Board as a plumber.

(B) A field representative may:

(i) make [Make] on-site license and registration checks to determine compliance with this Act;

(ii) investigate consumer complaints filed under §1301.303 of the Plumbing License Law;

(iii) assist municipal plumbing inspectors in cooperative enforcement of this Act; and

(iv) issue citations as provided by §1301.502 of the Plumbing License Law.

(25) Journeyman Plumber--An individual licensed under this Act who has met the qualifications for registration as a Plumber's Apprentice or for licensure as a Tradesman Plumber-Limited Licensee, who has completed at least 8,000 hours working under the supervision of a Responsible Master Plumber [~~master plumber~~], who supervises, engages in, or works at the actual installation, alteration, repair, service and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(26) License--A document issued by the Board to certify that the named individual fulfilled the requirements of the Act and of these rules to hold a license issued by the Board.

(27) Licensing and Registering--The process of granting, denying, renewing, revoking, or suspending a License, Registration or Endorsement.

(28) Maintenance Man or Maintenance Engineer--An employee, as opposed to an independent contractor, who performs plumbing maintenance work incidental to and in connection with other duties. "Incidental to and in connection with" includes the repair, maintenance and replacement of existing potable water piping, existing sanitary waste and vent piping, existing plumbing fixtures and existing water heaters. "Incidental to and in connection with" does not include cutting into fuel gas plumbing systems and the installation of gas fueled water heaters. An individual who erects, builds, or installs plumbing not already in existence may not be classified as a maintenance man or maintenance engineer. Plumbing work performed by a maintenance man or maintenance engineer is not exempt from state law and municipal rules and ordinances regarding plumbing codes, plumbing permits

and plumbing inspections. Such maintenance individuals shall not engage in plumbing work for the general public.

(29) Master Plumber--An individual licensed under this Act who is skilled in the design, planning, superintending, and the practical installation, repair, and service of plumbing, [~~who secures permits for plumbing work,~~] who is knowledgeable about the codes, ordinances, or rules and regulations governing those matters, who alone, or through an individual or individuals under his supervision, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(30) Medical Gas Piping Installation Endorsement--a document entitling the holder of a Master or Journeyman Plumber License to install piping that is used solely to transport gases used for medical purposes including, but not limited to oxygen, nitrous oxide, medical air, nitrogen, medical vacuum.

(31) One Family Dwelling--a detached structure designed for the residence of a single family that does not have the characteristics of a multiple family dwelling, and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(32) Party--Each person named or admitted in association with an action as a party.

(33) Paid Directly--As related to §1301.255(e) of the Plumbing License Law, "paid" and "directly" have the common meanings and "paid directly" means that compensation for plumbing inspections must be paid by the political subdivision to the individual Licensed Plumbing Inspector who performed the plumbing inspections or the plumbing inspection business which utilized the plumbing inspector to perform the inspections.

(34) Person--For the purposes of these Rules only, a person means an individual, partnership, corporation, limited liability company, association, governmental subdivision or public or private organization of any character other than an agency.

(35) Petitioner--A person asking the Board to adopt a rule.

(36) Plumber's Apprentice--any individual other than a Master Plumber, Journeyman Plumber, or Tradesman Plumber-Limited Licensee who, as his or her principal occupation, is engaged in learning and assisting in the installation of plumbing, is registered by the Board, and works under the supervision of a licensed Responsible Master Plumber and the direct supervision of a licensed plumber.

(37) Plumbing--All piping, fixtures, appurtenances, and appliances, including disposal systems, drain or waste pipes, or any combination of these that: supply, distribute, circulate, recirculate, drain, or eliminate water, gas, medical gasses and vacuum, liquids, and sewage for all personal or domestic purposes in and about buildings where persons live, work, or assemble; connect the building on its outside with the source of water, gas, or other liquid supply, or combinations of these, on the premises, or the water main on public property; and carry waste water or sewage from or within a building to the sewer service lateral on public property or the disposal or septic terminal that holds private or domestic sewage. The installation, repair, service, maintenance, alteration, or renovation of all piping, fixtures, appurtenances, and appliances on premises where persons live, work, or assemble that supply gas, medical gasses and vacuum, water, liquids, or any combination of these, or dispose of waste water or sewage.

(38) Plumbing Company--A person, as defined in these sections [Rules], who engages in the plumbing business.

(39) Plumbing Inspection--Any of the inspections required in §1301.255 and §1301.551 of the Plumbing License Law, including any check of pipes, faucets, tanks, valves, water heaters, plumbing fixtures and appliances by and through which a supply of water, gas, medical gasses or vacuum, or sewage is used or carried that is performed on behalf of any political subdivision, public water supply, municipal utility district, town, city or municipality to ensure compliance with the adopted plumbing and gas codes and ordinances regulating plumbing.

(40) Plumbing Inspector--means any individual who is employed by a political subdivision or state agency, or who contracts as an independent contractor with a political subdivision or state agency, for the purpose of inspecting plumbing work and installations in connection with health and safety laws, ordinances, and plumbing and gas codes, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board.

(41) Pocket Card--A card issued by the Board which certifies that the holder has a Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, Residential Utilities Installer Registration, Drain Cleaner Registration, Drain Cleaner-Restricted Registration or a Plumber's Apprentice Registration.

(42) Political Subdivision--A political subdivision of the State of Texas that includes a:

- (A) city;
- (B) county;
- (C) school district;
- (D) junior college district;
- (E) municipal utility district;
- (F) levee improvement district;
- (G) drainage district;
- (H) irrigation district;
- (I) water improvement district;
- (J) water control improvement district;
- (K) water control preservation district;
- (L) freshwater supply district;
- (M) navigation district;
- (N) conservation and reclamation district;
- (O) soil conservation district;
- (P) communication district;
- (Q) public health district;
- (R) river authority; and
- (S) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of government and;

(iii) possesses authority for subordinate self government through officers selected by it.

(43) P-Trap--A fitting connected to the sanitary drainage system for the purpose of preventing the escape of sewer gasses from

the sanitary drainage system and designed to be removed to allow for cleaning of the sanitary drainage system. For the purposes of drain cleaning activities described in §1301.002(2) of the Plumbing License Law, a p-trap includes any integral trap of a water closet, bidet, or urinal.

(44) Public Water System--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals, but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater, at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if the individual lives in, uses as the individual's place of employment, or works in a place to which drinking water is supplied from the water system.

(45) Regularly Employed--Steadily, uniformly, or habitually working in an employer-employee relationship with a view of earning a livelihood, as opposed to working casually or occasionally.

(46) Residential Utilities Installer--means an individual who has completed at least 2,000 hours working under the supervision of a Responsible Master Plumber as a registered Plumber's Apprentice, who has fulfilled the requirements of and is registered with the Board, and who constructs and installs yard water service piping for one family or two family dwellings and building sewers.

(47) Respondent--A person charged in a complaint filed with the Board.

(48) Responsible Master Plumber--A person licensed as a Master Plumber who:

(A) allows the person's Master Plumber license to be used by only one plumbing company for the purpose of offering and performing plumbing work under the person's Master Plumber license;

(B) is authorized to obtain permits for plumbing work; assumes responsibility for plumbing work performed under the person's license; and

(C) has submitted a certificate of insurance as required by §1301.3576 of the Plumbing License Law and §367.3 of this title.

~~{(48) Responsible Master Plumber--A Responsible Master Plumber is the Master Plumber who allows his Master Plumber License to be used by a company for the purpose of performing plumbing work and obtaining the required plumbing permits. The Master Plumber by allowing his license to be used in this manner, assumes responsibility for all plumbing work performed. A Responsible Master Plumber may allow his Master Plumber License to be used by only one plumbing company.}~~

(49) Rule--An agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures.

(50) Supervision--the general on-the-job or off-the-job oversight, direction and management of plumbing work and individuals performing plumbing work by a Responsible Master Plumber

who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(A) that the operations of the plumbing company that has secured his or her services meets the requirements of all applicable local and state ordinances, regulations and laws; and

(B) that the plumbing work performed under his or her License will protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(51) System--An interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could endanger public health if improperly installed.

(52) Tradesman Plumber-Limited Licensee--means an individual who has completed at least 4,000 hours working under the direct supervision of a Journeyman or Master Plumber as a registered Plumber's Apprentice, who has passed the required examination and fulfilled the other requirements of the Board, who constructs and installs plumbing for one family or two family dwellings under the supervision of a Responsible Master Plumber, and who has not met or attempted to meet the qualifications for a Journeyman Plumber License.

(53) Two Family Dwelling--a detached structure with separate means of egress designed for the residence of two families ("duplex") that does not have the characteristics of a multiple family dwelling and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(54) Water Supply Protection Specialist--a Master or Journeyman Plumber who holds the Water Supply Protection Specialist Endorsement issued by the Board.

(55) Water Treatment--A business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system.

(56) Work as a Master Plumber--To act as and assume the responsibilities of a Responsible Master Plumber, as defined in these sections [Rules].

(57) Yard Water Service Piping--The building supply piping carrying potable water from the water meter or other source of water supply to the point of connection to the water distribution system at the building.

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 November 1, 2010.

TRD-201006153
Robert L. Maxwell
Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: December 12, 2010

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



CHAPTER 363. EXAMINATIONS

22 TAC §363.1

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §363.1, which set forth requirements to qualify a person for registration or examination for a license or endorsement.

The amendments to §363.1 are proposed in response to the passage of Senate Bill (SB) 1410, 81st Regular Legislative Session. Section 1301.3565 was added to the Plumbing License Law by SB 1410, which provides for a new category of license endorsement for the installation of multipurpose residential fire protection sprinkler systems. The Board satisfied a requirement of §1301.3565 by approving criteria for a training program for persons who wish to qualify for the Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement. Section 1301.3565 also allows a Plumbing Inspector who meets the requirements of the Board to inspect multipurpose residential fire protection sprinkler installations.

Section 363.1(f) requires 500 hours of training or experience in the plumbing industry of an applicant for the Plumbing Inspector examination, who is not licensed by the Board, not licensed by the state as a professional engineer or architect or not licensed in another state as a plumbing inspector. Section 363.1(f) lists various methods for such an applicant to accumulate credit for the 500 hours of plumbing related training.

The proposed amendments will provide such applicants with an additional option toward accumulating the required 500 hours of plumbing related training or experience. The proposed amendments will allow 100 hours of credit for the successful completion of a Board approved Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement training program. The 100 hours of credit will serve to encourage such applicants to gain knowledge of multipurpose residential fire protection sprinkler systems by completing the training program.

Economic Impact Statement and Regulatory Flexibility Analysis
Texas Government Code §2006.002, as amended by the 80th Legislature, House Bill (HB) 3430, requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses. The proposed amendments to §363.1 will expand the options available for applicants for the Plumbing Inspector examination from which to choose and do not mandate an applicant to complete the training program. Therefore, the proposed amendments to §363.1 will have no adverse economic impact on small businesses.

Robert L. Maxwell, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal impact on state and local government as well as small businesses and persons required to comply with these amendments.

Mr. Maxwell also has determined that each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that more applicants for the Plumbing Inspector examination will receive training and gain knowledge in multipurpose residential fire protection sprinkler systems. Public health and safety will benefit from Plumbing Inspectors who are trained in the installation of multipurpose residential fire protection sprinkler systems.

Comments on the proposed amendments may be submitted within 30 days of publication of these proposed rule amend-

ments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §363.1 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 81st Legislature (Plumbing License Law or Law), §§1301.251, 1301.3565 and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.3565 allows a Plumbing Inspector who meets the requirements of the Board to inspect multipurpose residential fire protection sprinkler installations. The amendments to §363.1 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, HB 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

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

§363.1. *Qualifications.*

(a) An applicant may qualify for a Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, Plumber's Apprentice Registration, Residential Utilities Installer Registration, Drain Cleaner Registration or Drain Cleaner-Restricted Registration. A Master or Journeyman Plumber License may contain a Medical Gas Piping Installation Endorsement, Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement, or Water Supply Protection Specialist Endorsement. In order to qualify for any of the licenses or endorsements an applicant must meet all the requirements of the Board, successfully complete the required examination and remit the appropriate fee. In order to qualify for any of the registrations an applicant must meet all the requirements of the Board and remit the appropriate fee.

(b) When a Plumber's Apprentice or Tradesman Plumber-Limited license holder applies to take an examination, he/she must submit the Employer's Certification. This form certifies the Applicant's work experience complies with the eligibility criteria for the examination. If the applicant has met the criteria through employment with one employer, the Employer's Certification must be completed by that employer. However, if the applicant has met the criteria through employment with various employers, then the Employer's Certification must be submitted from each of those employers. Therefore, the Board recommends that the applicant request an employer complete the Employer's Certification annually and each time the Applicant discontinues employment with a particular employer. A Licensee is required to complete the Employer's Certification form within 30 days of a request by any individual who has worked as a Plumber's Apprentice or Tradesman Plumber-Limited license holder under the Licensee's supervision. It is the responsibility of the Applicant to supply the Licensee with the Employer's Certification form.

(1) In accordance with the requirements of §1301.002 and §1301.354, of the Plumbing License Law, a person may receive credit for on-the-job work hours required to qualify for a Tradesman Plumber-Limited or Journeyman Plumber examination, only while the person holds a valid Plumber's Apprentice registration; or

(2) a valid Tradesman Plumber-Limited license.

(c) Master Plumber. Each applicant must:

(1) be licensed either as:

(A) a Journeyman Plumber in Texas or another state with at least 8,000 hours working at the trade under a Responsible Master Plumber and must have held the Journeyman License for at least:

(i) four years; or

(ii) one year and have successfully completed a training program approved by the United States Department of Labor Office of Apprenticeship or another nationally recognized apprentice training program accepted by the Board; or

(B) a Master Plumber in another state who has met the requirements in subparagraph (A) of this paragraph;

(2) be a high school graduate or hold a General Equivalency Diploma (GED); and

(3) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas.

(d) Journeyman Plumber.

(1) Each applicant must:

(A) be a high school graduate or hold a General Equivalency Diploma (GED); and

(B) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas.

(C) have either of the following:

(i) A current Plumber's Apprentice Registration or Tradesman Plumber-Limited and at least 8,000 hours of experience working at the trade under the supervision of a Responsible Master Plumber, as verified by employers; or

(ii) a valid Journeyman License from another state and at least 8,000 hours of experience working at the trade under the supervision of a Master Plumber;

(D) complete 48 hours of classroom training provided by a board-approved instructor in a board-approved training program in the areas of health and safety, applicable plumbing codes, and water conservation, as provided by §363.12 of this chapter (relating to Training Programs for Journeyman Plumber and Tradesman Plumber-Limited License Applicants).

(2) At the applicant's request, the Board may credit an applicant for the Journeyman Plumber examination with up to 500 hours of the work experience required before taking an examination if the applicant has completed the classroom portion of a training program:

(A) approved by the United States Department of Labor, Office of Apprenticeship; or

(B) provided by a person approved by the Board and based on course materials approved by the Board.

(3) Notwithstanding the training required by paragraph (1) of this subsection, a Plumber's Apprentice may apply for and take an examination for a license as a Journeyman Plumber if the apprentice has received an associate of applied science degree from a plumbing technology program that:

(A) includes a combination of classroom and on-the-job training; and

(B) is approved by the Board and the Texas Higher Education Coordinating Board.

(4) A Plumber's Apprentice who is enrolled in good standing in a training program approved by the United States Department of Labor, Office of Apprenticeship, may take a Journeyman Plumber ex-

amination without completing the classroom training required by paragraph (1)(D) of this subsection.

(e) Tradesman Plumber-Limited.

(1) Each applicant must:

(A) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas; and

(B) have either of the following:

(i) Plumber's Apprentice Registration and have completed at least 4,000 hours of experience working at the trade as a Registered Plumber's Apprentice under the direct supervision of a Tradesman Plumber-Limited, Journeyman Plumber or Master Plumber, and the supervision of a Responsible Master Plumber, as verified by employers; or

(ii) a valid Journeyman or Master License from another state and at least 4,000 hours of experience working at the trade under the supervision of a Master Plumber.

(C) complete 24 hours of classroom training provided by a board-approved instructor in a board-approved training program in the areas of health and safety, applicable plumbing codes, and water conservation, as provided by §363.12 of this chapter.

(2) At the applicant's request, the Board may credit an applicant for the Tradesman Plumber-Limited examination with up to 500 hours of the work experience required before taking an examination if the applicant has completed the classroom portion of a training program:

(A) approved by the United States Department of Labor, Office of Apprenticeship; or

(B) provided by a person approved by the Board and based on course materials approved by the Board.

(3) Notwithstanding the training required by paragraph (1) of this subsection, a plumber's apprentice may apply for and take an examination for a license as a Tradesman Plumber-Limited if the apprentice has received an associate of applied science degree from a plumbing technology program that:

(A) includes a combination of classroom and on-the-job training; and

(B) is approved by the Board and the Texas Higher Education Coordinating Board.

(4) A plumber's apprentice who is enrolled in good standing in a training program approved by the United States Department of Labor, Office of Apprenticeship, may take a Tradesman Plumber-Limited examination without completing the classroom training required by paragraph (1)(C) of this subsection.

(f) Plumbing Inspector. Each applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas;

(2) be a high school graduate or hold a General Equivalency Diploma (GED) and

(3) have one of the following:

(A) a Journeyman or Master Plumber License issued in the state of Texas;

(B) a Journeyman or Master Plumber License issued in another state, provided he or she passes the Texas State Board of Plumbing Examiners Journeyman exam;

(C) a Plumbing Inspector license issued by another state with licensing requirements substantially equivalent to the licensing requirements of the Texas State Board of Plumbing Examiners;

(D) a professional engineer or a professional architect license issued in this state; or

(E) a total of 500 hours training or experience in the plumbing industry, that shall be credited by any combination of the following:

(i) 100 hours credit for successful completion of a certification in the Uniform Plumbing Code or the International Plumbing Code, issued by the International Association of Plumbing and Mechanical Officials (IAPMO), International Conference of Building Officials (ICBO), Building Officials and Code Administrators International (BOCA) or Southern Building Code Congress International (SBCCI) plumbing code certification;

(ii) 100 hours credit for successful completion of a Board approved Medical Gas Piping Installation Endorsement Training Program;

(iii) 100 hours credit for successful completion of a Board approved Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement Training Program;

(iv) ~~[(iii)]~~ 50 hours credit for successful completion of a Board approved Water Supply Protection Specialist Endorsement Training Program;

(v) ~~[(iv)]~~ 100 hours credit for successful completion of an approved Backflow Tester Certification program;

(vi) ~~[(v)]~~ 6 hours credit for successful completion each different Board approved Continuing Professional Education for Licensed Plumbers and Plumbing Inspectors Course;

(vii) ~~[(vi)]~~ actual hours, with a maximum of 100 hours credit for approved, documented and verified plumbing related training academy or educational sessions;

(viii) ~~[(vii)]~~ actual hours, with a maximum of 200 hours credit for on the job work experience in the plumbing trade or approved similar plumbing related trade, as verified by former employers; or

(ix) ~~[(viii)]~~ actual hours, with a maximum of 200 hours credit for documented and verified on the job training in the enforcement of plumbing codes under the direct supervision of a Licensed Plumbing Inspector.

(g) Medical Gas Piping Installation Endorsement. Each applicant must:

(1) hold a current Journeyman or Master Plumber License; and

(2) have successfully completed a Board approved training program in medical gas piping installation which includes the standards contained in the latest edition of the National Fire Protection Association (NFPA) 99C Gas and Vacuum Systems.

(h) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement. Each applicant must:

(1) hold a Journeyman or Master Plumber license; and

(2) have successfully completed a training program approved by the Board that provides the training necessary for the proper installation of a multipurpose residential fire protection sprinkler system as required by the applicable codes and standards recognized by the state.

(i) Water Supply Protection Specialist Endorsement. Each applicant must:

(1) hold a current Journeyman or Master Plumber License;

(2) have successfully completed a Board approved training program in backflow prevention; and

(3) have successfully completed a Board approved training program designed around the Federal Safe Drinking Water Act and the Federal Clean Water Act, on-site wastewater and site evaluations and graywater re-use, water quality training and water treatment, water utilities systems and regulations, water conservation, xeriscape irrigation, fire protection systems, and state laws regulating lead contamination in drinking water.

(j) Residential Utilities Installer. Each Applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas;

(2) be registered as a Plumber's Apprentice;

(3) have completed at least 2,000 hours working at the trade as a Registered Plumber's Apprentice under the direct supervision of a Tradesman Plumber-Limited, Journeyman Plumber, or Master Plumber, and the supervision of a Responsible Master Plumber, as verified by employers; and

(4) complete a Board approved training program.

(k) Drain Cleaner. Each Applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas;

(2) be registered as a Plumber's Apprentice;

(3) have completed at least 4,000 hours working at the trade as a Drain Cleaner-Restricted Registrant under the supervision of a Responsible Master Plumber, as verified by employers; and

(4) complete a Board approved training program.

(l) Drain Cleaner-Restricted Registrant. Each Applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas;

(2) be registered as a Plumber's Apprentice, working under the direct supervision of a Tradesman Plumber-Limited, Journeyman Plumber, or Master Plumber, and under the supervision of a Responsible Master Plumber;

(3) complete a Board approved training program.

(m) Plumber's Apprentice. Each applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas; and

(2) be at least sixteen (16) years of age.

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 November 1, 2010.

TRD-201006154

Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: December 12, 2010
For further information, please call: (512) 936-5224



22 TAC §363.12

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §363.12, which set forth the specific training requirements for applicants for the Journeyman Plumber and Tradesman Plumber-Limited examinations, required in §1301.354 of the Plumbing License Law.

The training requirements specified in current §363.12 include completion of the Occupational Safety and Health Administration (OSHA) 10-hour Outreach Training for the construction industry. Section 363.12 specifies the number of hours required for each segment of the OSHA 10-Hour Outreach Training, including one hour specified for the segment titled "Introduction to OSHA." The amendments to §363.12 are proposed in response to a change implemented by OSHA in the specific number of hours required for the segment titled "Introduction to OSHA" from one hour to two hours.

In order to eliminate the current conflict between the OSHA requirements and the requirements of §363.12, the Board proposes to eliminate the specific hour requirements listed in §363.12 for each segment of the OSHA training, while keeping the language which requires applicants to complete the OSHA 10-Hour Outreach program related to the construction industry. This proposal will serve to eliminate not only the current conflict, but also any possible future conflict regarding the specific number of hours required for each segment. The result will be that Board approved Course Instructors will have the ability to follow both OSHA guidelines and the requirements of §363.12 harmoniously when providing the OSHA 10-Hour Outreach Training to applicants. In this manner, the applicant who successfully completes the training will receive Board credit for completing the training required in §363.12 and also qualify for a certification from OSHA for completing the 10-Hour Outreach Training.

Economic Impact Statement and Regulatory Flexibility Analysis

Texas Government Code §2006.002, as amended by the 80th Legislature, House Bill (HB) 3430, requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses. The proposed amendments to §363.12 will have no adverse economic impact on small businesses. The proposed amendments to §363.12 do not change the overall requirement for applicants to complete the OSHA 10-Hour Outreach Training, and, therefore, have no adverse economic impact on small businesses.

Robert L. Maxwell, Executive Director of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal impact on state and local government as well as small businesses and persons required to comply with these amendments.

Mr. Maxwell also has determined that each year of the first five years the rule is in effect public health and safety will benefit from plumbing performed by individuals who are properly trained

prior to qualifying for a Journeyman Plumber and Tradesman Plumber-Limited examination.

Comments on the proposed rule changes may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §363.12 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 81st Legislature ("Plumbing License Law" or "Law"), §1301.251, and §1301.354 and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.354 sets forth the training requirements for applicants for the Journeyman Plumber and Tradesman Plumber-Limited examinations. The amendments to §363.12 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, HB 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

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

§363.12. Training Programs for Journeyman Plumber and Tradesman Plumber-Limited License Applicants.

(a) Before an applicant may take an examination for a Tradesman Plumber-Limited license or Journeyman Plumber license, the applicant must complete classroom training provided by a board-approved instructor in a board-approved training program in the areas of health and safety, the latest versions of plumbing codes adopted by the Board, and water conservation for at least:

- (1) 24 hours, if the applicant is applying to take a Tradesman Plumber-Limited License examination; or
- (2) 48 hours, if the applicant is applying to take a Journeyman Plumber examination.

(b) The classroom training shall include the following Continuing Professional Education (CPE) classes as provided by §365.14 of this title (relating to Continuing Professional Education Programs):

- (1) one six hour CPE class, if the applicant is applying for a Tradesman Plumber-Limited license; or
- (2) two six hour CPE classes, if the applicant is applying for a Journeyman Plumber license.

(c) In addition to the CPE classes required by subsection (b)(1) and (b)(2) of this section, applicants for a Tradesman Plumber-Limited License and Journeyman Plumber license must complete the OSHA 10-Hour Outreach Training, including Construction Mandatory Topics Review, as set forth in paragraphs (1) - (9) of this subsection:

- (1) Introduction to OSHA [~~4 hour~~];
- (2) OSHA Focus on Four Hazards [~~2 hours~~], including:
 - (A) Fall Protection;
 - (B) Electrical;
 - (C) Caught in Between; and
 - (D) Struck By;
- (3) Personal Protective and Life Saving Equipment [~~4 hour~~];
- (4) Health Hazards in Construction [~~1 hour~~], including:

- (A) Hazard Communication; and
- (B) Silica;
- (5) Tools [~~(1 hour)~~], including:
 - (A) hand tools; and
 - (B) power tools;
- (6) Excavations [~~(1 hour)~~];
- (7) Stairways and Ladders [~~(1 hour)~~];
- (8) Hazardous Materials [~~(1 hour)~~]; and
- (9) Introduction to Industrial Hygiene and Blood Borne Pathogens [~~(1 hour)~~].

(d) In addition to the CPE classes and OSHA training required by subsections (b)(1), (b)(2) and (c) of this section, applicants for a Tradesman Plumber-Limited License and Journeyman Plumber license must complete eight hours of classroom training, as set forth in paragraphs (1) - (7) of this subsection:

- (1) two hours, to include:
 - (A) reading and understanding residential construction drawings;
 - (B) learning the basics of math for plumbing;
 - (C) drawing rough in and riser diagrams;
- (2) one hour to review the International Residential Code chapter on Fuel Gas, including:
 - (A) definitions;
 - (B) pipe sizing and layout; and
 - (C) testing and inspections;
- (3) one hour to review the International Residential Code chapter on General Plumbing Requirements, including:
 - (A) individual water supply and sewage disposal;
 - (B) structural and piping protection, including notching and boring;
 - (C) trenching and backfilling;
 - (D) workmanship and waterproofing penetrations; and
 - (E) listed, labeled and approved materials;
- (4) one hour to review the International Residential Code chapters on Plumbing Fixtures and Water Heaters, including:
 - (A) the installation of plumbing fixtures and accessories;
 - (B) water heater installation and replacement, including hazards of improper installations; and
 - (C) water heater safety devices and alternative methods of existing installations not to code;
- (5) one hour to review the International Residential Code chapter on Water Supply and Distribution, including:
 - (A) understanding and principals of backflow protection for potable water systems;
 - (B) water supply systems, including thermal expansion control and water hammer arrestors;
 - (C) water conservation and maximum flow for plumbing fixtures;

- (D) sizing and pressures of potable water systems from the meter throughout distribution to fixture connections;
- (E) materials and installation of potable water piping;
- (F) demonstration of soldering and brazing according to B-828 standards;
- (G) hangers, anchors and supports; and
- (H) drinking water treatment units;
- (6) one hour to review the International Residential Code chapters on Sanitary Drainage and Vents, including:
 - (A) materials and installation of drainage systems including proper grade and changes in direction of fittings;
 - (B) preparation of piping;
 - (C) standards for solvent cementing of pipe and fittings;
 - (D) cast iron piping and fittings;
 - (E) location and installation of cleanouts;
 - (F) sumps and ejectors sizing and installation;
 - (G) understanding the principals and physics of proper venting;
 - (H) installation of different types of venting systems; and
 - (I) improper connections and prohibited venting applications;
- (7) one hour to review the International Residential Code chapter on Traps, including:
 - (A) design and prohibited traps;
 - (B) sizing and installation of traps and trap arms; and
 - (C) trap protection.
- (e) In addition to the training required by subsections (b)(1), (b)(2), and (c) of this section, applicants for a Journeyman Plumber license must complete 18 hours of classroom training in certain chapters of the Uniform Plumbing Code, International Plumbing Code, or the International Fuel Gas Code (as appropriate); the Texas Accessibility Standards, the Americans with Disabilities Act; and water conservation, as set forth in paragraphs (1) - (12) of this subsection:
 - (1) 1 hour to review the chapters on General Regulations;
 - (2) 1 hour to review the chapters on Plumbing Fixtures and Fixture Fittings, including:
 - (A) general requirements and water conservation information for plumbing fixtures;
 - (B) commercial plumbing fixtures; and
 - (C) location and installation requirements for fixtures and fixture fittings;
 - (3) 2 hours to review the chapters on Water Heaters, including:
 - (A) general regulations for water heater installation and replacement, including hazards of improper installations;
 - (B) safety requirements for commercial water heaters;
 - (C) different types of water heaters available, including installations; and

- (D) safety devices and alternative methods to bring existing installations into compliance with plumbing codes;
- (4) 2 hours to review the chapters on Water Supply and Distribution, including:
 - (A) installation of potable water systems;
 - (B) pipe sizing of water supply and distribution;
- (5) 2 hours to review the chapters on Sanitary Drainage, including:
 - (A) understanding commercial plumbing; and
 - (B) pipe sizing of sanitary waste;
- (6) 1 hour to review the chapters on Indirect Wastes, including:
 - (A) applications accepted for indirect waste systems, both air-gap and air-break; and
 - (B) understanding the reason for indirect waste systems;
- (7) 2 hours to review the chapters on Vents, including:
 - (A) physics and importance of proper venting;
 - (B) different venting methods, including vent termination;
 - (C) special venting for island fixtures, and combination waste and vent systems; and
 - (D) pipe sizing of vents;
- (8) 1 hour to review the chapters on Traps and Interceptors, including:
 - (A) physics and importance of trap protection;
 - (B) grease interceptor design, installation and maintenance according to Plumbing Drainage Institute; and
 - (C) different types of interceptors and applications according to code;
- (9) 1 hour to review the chapters on Storm Drainage, including:
 - (A) basic design, materials and installation of storm water systems;
 - (B) hazards of improper installations; and
 - (C) testing procedures for storm drainage systems;
- (10) 2 hours to review the chapters on Fuel Gas Piping, including:
 - (A) hazards of improperly designed or installed fuel gas piping and appliances;
 - (B) approved materials and methods, including pipe and fittings; and
 - (C) combustion air requirements;
- (11) 1 hour to review the basic installation of handicapped plumbing fixtures for commercial projects, as required by the Texas Accessibility Standards and the Americans with Disabilities Act; and
- (12) 2 hours to review new technology which promotes water and energy conservation, including rain water harvesting, solar energy, and water smart applications.

(f) The Board will approve only Course Providers and Course Instructors who are approved to provide and instruct Continuing Professional Education (CPE) courses, under §365.14 of this title, to provide and instruct the classroom training required by this section, with the following exception:

(1) an instructor must be certified by the Occupational Safety and Health Administration to provide the training required under subsection (c) of this section; and

(2) any person who is not approved to teach CPE under §365.14 of this title, but is certified by the Occupational Safety and Health Administration, may provide training through a Course Provider, for the OSHA training course referenced in subsection (c) of this section.

(g) Course Providers and Course Instructors may be approved to provide the classroom training required under this section without submitting a separate application in addition to the application required to be approved to provide and instruct CPE, under §365.14 of this title.

(1) Any Course Provider or Course Instructor whose approval to provide or instruct CPE courses under §365.14 of this title is suspended or revoked for any reason, is not approved to provide or instruct the classroom training required under this section.

(2) Course Providers and Course Instructors shall adhere to the instruction criteria in subsections (b), (c) and (d) of this section, and ensure that only students who receive the specified number of contact hours of instruction (excluding any time spent on breaks from instruction) receive credit for completing the training required by this section.

(3) Course Providers or Course instructors shall provide notice of intent to conduct training required by this section, in the same manner required by §365.14(b)(10) of this title.

(4) Course Instructors shall abide by the same standards of conduct described in §365.14(c) of this title, when providing the training required by this section.

(h) The training required by this section may be provided in increments, as appropriate, and the Course Provider or Course Instructor shall provide a certificate of completion to the student for each increment completed.

(1) The certificate of completion shall state:

- (A) the names of the Course Provider and Course Instructor;
- (B) the name and registration or license number of the student;
- (C) the specific instruction and number of hours completed; and
- (D) the date that the increment of instruction was completed.

(2) The Course Provider shall maintain a record of the information contained on each certificate of completion for at least six years.

(i) The applicant for examination is responsible for the safe keeping of each original certificate of completion earned by the applicant, until such time that the applicant:

- (1) has completed the training required under this section;
- (2) has met all other requirements under §363.1 of this chapter (relating to Qualifications), to qualify to take a Tradesman Plumber-Limited or Journeyman Plumber examination; and

(3) submits the original certificates of completion along with the appropriate examination application and other required documentation to the Board.

(j) Providing false certificates of completion or any other false information to the Board may result in denial of the applicant's examination application and may result in additional disciplinary action, as provided by the Plumbing License Law, Board Rules or other laws of this state.

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

Filed with the Office of the Secretary of State on November 1, 2010.

TRD-201006155

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: December 12, 2010

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



CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.2

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §365.2, which lists specific plumbing work which may be performed without a license or registration issued by the Board, as provided by Subchapter B, of the Plumbing License Law.

The amendments are proposed in response to the passage of Senate Bill (SB) 1354, 81st Regular Legislative Session. The proposed amendments reflect revisions made to §1301.052 and §1301.053 of the Plumbing License Law by SB 1354.

Section 1301.052 describes certain plumbing work which is exempted from licensing requirements, based on the type and location of plumbing work. Section 1301.052 was amended to add the terms "repair" and "remodeling" to the existing term "new Construction", as the types of plumbing which require a license issued by the Board, regardless of where the plumbing is performed. Section 1301.052, as amended, provides certain exemptions to the licensing requirements for other plumbing work which is not performed in conjunction with new construction, repair or remodeling. The amendments to §365.2 reflect the amendments made to §1301.052 of the Plumbing License Law.

Section 1301.053 was amended to exclude "installation and service work on water heaters" from plumbing which may be performed by an appliance dealer or an employee of an appliance dealer who does not hold a license issued by the Board. The amendments to §365.2 also reflect the amendments made to §1301.053 of the Plumbing License Law.

Economic Impact Statement and Regulatory Flexibility Analysis
Texas Government Code §2006.002, as amended by the 80th Legislature, House Bill (HB) 3430, requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses. The proposed amendments to §365.2 sim-

ply reflect the amendments made to the Plumbing License Law and will, therefore, have no adverse economic impact on small businesses.

Robert L. Maxwell, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal impact on state and local government as well as small businesses and persons required to comply with these amendments.

Mr. Maxwell also has determined that each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a clearer understanding of the licensing requirements and exemptions provided in Subchapter B of the Plumbing License Law. Public health and safety will benefit from plumbing performed by individuals who follow clear standards.

Comments on the proposed amendments may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §365.2 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 81st Legislature (Plumbing License Law or Law), §§1301.251, 1301.052, 1301.053 and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.052 describes certain plumbing work which is exempted from licensing requirements, based on the type and location of plumbing work. Section 1301.053 describes certain plumbing work incidental to professions which may be performed without a license. The amendments to §365.2 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, HB 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

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

§365.2. Exemptions.

The following plumbing work shall be permitted without a license but shall be subject to inspection and approval in accordance with local, city or municipal ordinances:

- (1) Plumbing work done by a property owner in the property owner's homestead;
- (2) Plumbing work that is not performed in conjunction with new construction, repair or remodeling, and is performed ~~done~~ on a property that is:
 - (A) located in a subdivision or on a tract of land that is not required to be platted under §232.0015, Local Government Code; or
 - (B) not connected to a public water system and is located outside a municipality, or
 - (C) located outside a municipality and connected to a public water system that does not require a license to perform plumbing; or
 - (D) located inside a municipality that is within a county that has fewer than 50,000 inhabitants and that:
 - (i) has [with] fewer than 5,000 inhabitants; and

(ii) by municipal ordinance has authorized a person who is not licensed under this the Plumbing License Law to perform plumbing, ~~unless an ordinance of the municipality requires the person to be licensed;~~

(3) Verification of medical gas and vacuum piping integrity and content;

(4) Work done on existing plumbing by a maintenance man or maintenance engineer, as defined in ~~[Board Rule]~~ §361.1 of this title (relating to Definitions), that is incidental or connected to other maintenance duties, provided that such an individual does not engage in cutting into fuel gas plumbing systems, the installation of gas fueled water heaters or plumbing work for the general public;

(5) Plumbing work done by a railroad employee on the premises or equipment of a railroad, provided such an individual does not engage in plumbing work for the general public;

(6) Plumbing work done by a person engaged by a public utility company to:

(A) lay, maintain, or operate its service mains or lines to the point of measurement; and

(B) install, change, adjust, repair, remove or renovate appurtenances, equipment, or appliances;

(7) Appliance installation or appliance service work, other than installation and service work on water heaters, done by bona fide appliance dealers and their employees that do not offer to perform plumbing work to the general public, in connecting appliances to existing openings with a code approved appliance connector without cutting into or altering the existing plumbing system;

(8) Irrigation work done by an individual working and licensed by the Texas Commission on Environmental Quality under Chapter 1903, Occupations Code, as an irrigator or installer;

(9) LP Gas service and installation work done by an individual working and licensed by the Texas Railroad Commission under Chapter 113 of the Natural Resources Code as a LP Gas Installer; and

(10) Water Treatment Specialists licensed by the Texas Commission on Environmental Quality under §341.034 of the Health and Safety Code may engage in residential, commercial or industrial water treatment activities including making connections necessary to complete the installation of a water treatment system.

(11) Water well pump installation and service work performed by an individual licensed by the Texas Commission on Environmental Quality under Chapter 1902 of the Occupations Code.

(12) Residential potable water supply or residential sanitary sewer connections performed by an organization certified by the Texas Commission on Environmental Quality to perform self-help project assistance on a Self-Help Project which complies with §1301.057 of the Occupations Code (Plumbing License Law).

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 November 1, 2010.

TRD-201006156

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: December 12, 2010

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



22 TAC §365.5

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §365.5, which sets forth requirements for the renewal of registrations, licenses, and endorsements issued by the Board.

The amendments to §365.5 are proposed in response to the passage of Senate Bill (SB) 1354, 81st Regular Legislative Session. The proposed amendments reflect revisions made to the Plumbing License Law by SB 1354, including a new §1301.405, which requires at least six hours of annual mandatory training for the renewal of Drain Cleaner, Drain Cleaner-Restricted Registrant and Residential Utilities Installer registrations. The language in §1301.405 closely resembles the language in existing §1301.404, which requires annual continuing professional education for the renewal of licenses issued by the Board. At its July 13, 2009 Board meeting, the Board voted to accept the current Continuing Professional Education program required in §1301.404 and detailed in §365.14 to meet the new requirements in §1301.405 for renewal of the affected registrations.

The amendments to §365.5 simply add the names of the affected registrations to the list of licenses which require at least six hours of Continuing Professional Education annually in order to renew the registrations and licenses.

Economic Impact Statement and Regulatory Flexibility Analysis

Texas Government Code §2006.002, as amended by the 80th Legislature, House Bill (HB) 3430, requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses. The proposed amendments to §365.5 will have no adverse economic impact on small businesses. The proposed amendments to §365.5 simply reflect the amendments made to the Plumbing License Law and will, therefore, have no adverse economic impact on small businesses.

Robert L. Maxwell, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal impact on state and local government as well as small businesses and persons required to comply with these amendments.

Mr. Maxwell also has determined that each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a clearer understanding of the new requirements provided in §1301.405 of the Plumbing License Law. Public health and safety will benefit from plumbing performed by individuals who follow clear standards.

Comments on the proposed amendments may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §365.5 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 81st Legislature (Plumbing License Law or Law), §§1301.251, 1301.404, 1301.405, 22 TAC §365.6, §365.14 and the rule it

amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.404 requires at least six hours annually of continuing professional education for the renewal of licenses issued by the Board. Section 1301.405 requires at least six hours annually of mandatory training for certain registrations issued by the Board. Section 365.6 defines the terms under which licenses, endorsements and registrations issued by the Board expire. Section 365.14 provides the rules under which the Continuing Professional Education programs are carried out. The amendments to §365.5 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, HB 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

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

§365.5. *Renewals.*

(a) The Board shall inform a licensee or registrant of the impending expiration of a license, registration or endorsement by sending written notice at least 30 days before its expiration date to the licensee's last known mailing address according to Board records.

(b) A licensee or registrant may renew an unexpired license, registration or endorsement before its expiration date by meeting all renewal requirements and paying the fee required by the Board.

(c) The licensee's or registrant's failure to receive the notice of expiration will not alter the licensee's or registrant's responsibility to renew the license or registration each year or endorsement every three years by its expiration date.

(d) Any Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited Licensee, Drain Cleaner, Drain Cleaner-Restricted Registrant, Residential Utilities Installer, or Plumbing Inspector wishing to renew a license or registration must have proof submitted to the Board of successful completion of the required continuing professional education (CPE) course or courses, subject to the additional requirement in subsection (e) of this section.

(e) Any license holder with a medical gas endorsement must complete a Board approved medical gas continuing professional education class within the three-year period of the endorsement. The classroom hours shall consist of instruction of the most current edition of the National Fire Protection Association (NFPA) 99C, Standard on Gas and Vacuum Systems, and the changes therein. No license holder with a medical gas endorsement may count the same medical gas continuing professional education class twice towards meeting the continuing professional education requirements for renewal of the medical gas endorsement on a plumbing license.

(f) Any license or endorsement holder who lives in a county having no city with a population in excess of 100,000, or resides out of state, or who submits written proof to the Board from a physician stating the medical reason that the licensee is unable to attend a CPE class, may fulfill the continuing professional education requirements by completing a correspondence course approved by the Board.

(g) A person who holds a license and is:

(1) a member of the United States armed forces, a reserve component of the United States armed forces or the state military forces;

(2) is ordered to active duty by proper authority; and

(3) submits documentation acceptable to the Board which demonstrates the person was unable to renew the license in a timely manner due to the active duty service is:

(A) exempt from paying a late renewal fee; and

(B) entitled to an additional amount of time, equal to the total number of years or parts of years that the person serves on active duty, to complete any continuing education requirements and any other requirements related to the renewal of the person's license.

(h) Under §1301.404(f) of the Plumbing License Law, the following individuals may be credited as having fulfilled their continuing professional education (CPE) requirements for the current CPE course year, in order to renew a license issued by the Board:

(1) Any CPE Course Instructor who is fully approved under §365.14 of this chapter (relating to Continuing Professional Education Programs); and

(2) any employee of the Board who:

(A) monitors a current CPE class for compliance with the Plumbing License Law and these sections [~~Board Rules~~]; or

(B) reviews all approved Course Materials under §365.14 of this chapter and completes the current Course Instructor Certification Workshop conducted by the Board.

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

Filed with the Office of the Secretary of State on November 1, 2010.

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Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

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



22 TAC §365.6

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §365.6, which sets forth requirements for the renewal of registrations, licenses, and endorsements issued by the Board.

The amendments to the section are proposed in response to the passage of Senate Bill (SB) 1354, 81st Regular Legislative Session. The proposed amendments reflect revisions made to the Plumbing License Law by SB 1354, including a new §1301.405, which requires at least six hours of annual mandatory training for the renewal of Drain Cleaner, Drain Cleaner-Restricted Registrant and Residential Utilities Installer registrations. The language in §1301.405 closely resembles the language in existing §1301.404, which requires annual continuing professional education for the renewal of licenses issued by the Board. At its July 13, 2009 Board meeting, the Board voted to accept the current Continuing Professional Education program required in §1301.404 and detailed in §365.14 to meet the new requirements in §1301.405 for renewal of the affected registrations.

The amendments to §365.6 simply add the names of the affected registrations to the list of licenses which require at least six hours

of Continuing Professional Education annually in order to renew the registrations and licenses.

Economic Impact Statement and Regulatory Flexibility Analysis

Texas Government Code §2006.002, as amended by the 80th Legislature, House Bill (HB) 3430, requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses. The proposed amendments to §365.6 will have no adverse economic impact on small businesses. The proposed amendments to §365.6 simply reflect the amendments made to the Plumbing License Law and will, therefore, have no adverse economic impact on small businesses.

Robert L. Maxwell, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal impact on state and local government as well as small businesses and persons required to comply with these amendments.

Mr. Maxwell also has determined that each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a clearer understanding of the new requirements provided in §1301.405 of the Plumbing License Law. Public health and safety will benefit from plumbing performed by individuals who follow clear standards.

Comments on the proposed amendments may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §365.6 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 81st Legislature ("Plumbing License Law" or "Law"), §§1301.251, 1301.404, 1301.405; 22 TAC §365.5 and §365.14; and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.404 requires at least six hours annually of continuing professional education for the renewal of licenses issued by the Board. Section 1301.405 requires at least six hours annually of mandatory training for certain registrations issued by the Board. Section 365.5 set forth the requirements for renewal of licenses, endorsements and registrations issued by the Board. Section 365.14 provides the rules under which the Continuing Professional Education programs are carried out. The amendments to §365.6 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, HB 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

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

§365.6. Expirations.

(a) Any license or registration not properly renewed each year or any endorsement not properly renewed every three years by its expiration date will become invalid on that date and remain invalid until all renewal requirements are met.

(b) An individual whose license, registration or endorsement has been expired for 90 days or less may renew the license, registration or endorsement by meeting all renewal requirements, paying the Board the scheduled renewal fee and an additional fee equal to one-half the amount of the examination or registration fee for the license, registration or endorsement.

(c) An individual whose license, registration or endorsement has been expired for over 90 days but less than two years may renew the license, registration or endorsement by meeting all renewal requirements and paying the Board a sum equal to all unpaid renewal fees plus the examination or registration fee required for the license, registration or endorsement.

(d) No individual may renew a license, registration or endorsement that has been expired for two or more years; however, in such cases an individual can apply for a new license or endorsement by taking the current examination and paying the current fees. An individual may apply for a new Registration by meeting the requirements and procedures for obtaining an original registration and paying the current fees.

(e) Continuing professional education requirements must be satisfied prior to the renewal of any expired license, or Drain Cleaner, Drain Cleaner-Restricted Registrant or Residential Utilities Installer registration.

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

Filed with the Office of the Secretary of State on November 1, 2010.

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Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

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



22 TAC §365.14

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §365.14, which sets forth the requirements for the Continuing Professional Education required for the renewal of licenses issued by the Board.

The amendments to §365.14 are proposed in response to the passage of Senate Bill (SB) 1354, 81st Regular Legislative Session. The proposed amendments reflect revisions made to the Plumbing License Law by SB 1354, including a new §1301.405, which requires at least six hours of annual mandatory training for the renewal of Drain Cleaner, Drain Cleaner-Restricted Registrant and Residential Utilities Installer registrations. The language in §1301.405 closely resembles the language in existing §1301.404, which requires annual continuing professional education for the renewal of licenses issued by the Board. At its July 13, 2009 Board meeting, the Board voted to accept the current Continuing Professional Education program required in §1301.404 and detailed in §365.14 to meet the new requirements in §1301.405 for renewal of the affected registrations.

The amendments to §365.14 add the names of the affected registrations to the list of licenses which require at least six hours of Continuing Professional Education annually in order to renew expired registrations and licenses. The amendments also add words and terms referencing the applicable registrations necessary to carry out the new requirements.

Economic Impact Statement and Regulatory Flexibility Analysis

Texas Government Code §2006.002, as amended by the 80th Legislature, House Bill (HB) 3430, requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses. The proposed amendments to §365.14 will have no adverse economic impact on small businesses. The proposed amendments to §365.14 simply reflect the amendments made to the Plumbing License Law and will, therefore, have no adverse economic impact on small businesses.

Robert L. Maxwell, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal impact on state and local government as well as small businesses and persons required to comply with these amendments.

Mr. Maxwell also has determined that each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a clearer understanding of the new requirements provided in §1301.405 of the Plumbing License Law. Public health and safety will benefit from plumbing performed by individuals who follow clear standards.

Comments on the proposed rule changes may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §365.14 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 81st Legislature ("Plumbing License Law" or "Law"), §§1301.251, 1301.404, 1301.405; 22 TAC §365.5 and §365.6; and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.404 requires at least six hours annually of continuing professional education for the renewal of licenses issued by the Board. Section 1301.405 requires at least six hours annually of mandatory training for certain registrations issued by the Board. Section 365.5 set forth the renewal requirements for licenses, endorsements and registrations issued by the Board. Section 365.6 set forth the terms under which licenses, registrations and endorsements issued by the Board expire. The amendments to §365.14 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, HB 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

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

§365.14. Continuing Professional Education Programs.

(a) Course Materials--In preparation for the Continuing Professional Education course year, which begins on July 1, of each year, the Board will annually approve Course Materials to be used for the Continuing Professional Education (CPE) required for renewal of Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited License and Plumbing Inspector Licenses. The CPE required for the renewal of the aforementioned licenses, shall be accepted by the Board as the mandatory training required under §1301.404 of the Plumbing License Law for the renewal of Drain Cleaner, Drain Cleaner-Restricted Registrant and Residential Utilities Installer registrations. The Course Materials are the printed materials that are the basis for a substantial portion of a CPE course and which are provided to the Licensees and Registrants for use in the classroom, correspondence courses and future

reference by the Licensees and Registrants (students). The provider of Course Materials, Course Provider and Course Instructor shall encourage the student to retain the Course Materials for future reference and shall not purchase the used Course Materials from the student or otherwise offer any incentive to the student to not retain the Course Materials. Board approval of Course Materials will be subject to all of the terms and conditions of this Section. The following minimum criteria will be used by the Board in considering approval of Course Materials:

(1) The Course Materials will provide the basis for a minimum of six classroom hours of study. Three of the six hours will be in the subjects of health protection, energy conservation and water conservation, with the remaining three hours covering subjects which shall include information concerning the Act, Board Rules, current industry practices and codes, and subjects from lists of approved subjects published by the Board.

(2) The Board will periodically publish lists of approved subjects.

(3) The Course Materials must be presentations of relevant issues and changes within the subject areas as they apply to the plumbing practice in the current market or topics which increase or support the Licensee's development of skill and competence.

(4) The provider of the Course Materials must provide the Course Materials, as needed, in correspondence course form to comply with §1301.404(e) of the Act and subsection (b)(15)(L) of this section, which are to be made available for at least three (3) years or as necessary for renewal of an expired license.

(5) The Course Materials may not advertise or promote the sale of goods, products or services.

(6) The Course Materials must be printed and bound and, with the exception of the draft versions, must meet the following minimum technical specifications for printing and production:

- (A) Binding--Perfect or Metal Coiled,
- (B) Ink--Full Bleed Color,
- (C) Cover Material--80 Pound Gloss Paper,
- (D) Page Material--70 Pound

(7) The Course Materials will include Board forms used for doing business with licensees, registrants and the public. The Board forms shall be marked as being provided for example purposes only. Course Materials will provide information stating that the most current Board forms are available on the Board's website or by mail upon request.

(8) All Course Materials must have the following characteristics:

- (A) Correct grammar, spelling and punctuation,
- (B) Appropriate illustrations and graphics to show concepts not easily explained in words, and
- (C) In depth and comprehensive presentation of subject matter which increases or supports the skills or competence of the Licensees and Registrants.

(9) The provider of Course materials must have legal ownership of or an appropriate license for the use of all copyrighted material included within the Course materials. Board approved Course materials will contain a prominently displayed approval statement in 10 point bold type or larger containing the following language: "THIS CONTINUING PROFESSIONAL EDUCATION COURSE MATERIAL HAS BEEN APPROVED BY THE TEXAS STATE BOARD

OF PLUMBING EXAMINERS FOR USE IN THE (state year) CPE YEAR. BY ITS APPROVAL OF THIS COURSE MATERIAL, THE TEXAS STATE BOARD OF PLUMBING EXAMINERS DOES NOT ASSUME ANY RESPONSIBILITY FOR THE ACCURACY OF THE CONTENTS OF THE COURSE MATERIAL. FURTHER, THE TEXAS STATE BOARD OF PLUMBING EXAMINERS IS NOT MAKING ANY DETERMINATION THAT THE PARTY PUBLISHING THE COURSE MATERIALS HAS COMPLIED WITH ANY APPLICABLE COPYRIGHT AND OTHER LAWS IN PUBLISHING THE COURSE MATERIAL AND THE TEXAS STATE BOARD OF PLUMBING EXAMINERS DOES NOT ASSUME ANY LIABILITY OR RESPONSIBILITY THEREFOR. THE COURSE MATERIAL IS NOT BEING PUBLISHED BY NOR IS IT A PUBLICATION OF THE TEXAS STATE BOARD OF PLUMBING EXAMINERS."

(10) The provider of Course Materials will conduct instructor training in the use of Course Materials.

(11) The provider of Course Materials will be required to have distribution facilities that will ensure prompt distribution of course materials, facsimile ordering and a statewide toll free telephone number for placing orders. The provider of Course Materials must ship any ordered material within ten business days after the receipt of the order and payment for the course materials.

(12) The Board shall annually approve only individuals, businesses or associations to provide Course Materials. Any individual, business or association who wishes to offer to provide Course Materials shall apply to the Board for approval using application forms prepared by the Board. In order to be approved, the application must satisfy the Board as to the ability of the individual, business or association to provide quality Course Materials as required in this section [~~Section~~] and must include:

(A) name and address of individual applicant,

(B) names and addresses of all officers, directors, trustees or members of the governing board of any business or association applicant,

(C) statement by individual applicant, and each officer, director, trustee or member of governing board as to whether he or she has ever been convicted of a felony,

(D) current certificate of good standing issued to the business or association by the Texas Comptroller of Public Accounts for business or association applicants,

(E) fees to be charged for Course Materials,

(F) taxpayer identification number,

(G) name, telephone number and electronic mail address of the individual who is designated by the provider of Course Materials to be responsible for answering inquiries and receiving notifications from the Board.

(13) If the provider of Course Materials sells Course Materials to Course Providers, Registrants and Licensees, the Course Provider must sell the Course Materials at the same price as stated in the application.

(14) The Board may refuse to accept any application for approval as a provider of Course Materials that is not complete. The Board may deny approval of an application for any of the following reasons:

(A) failure to comply with the provisions of this section;

or

(B) inadequate coverage of the materials required to be included in Course Materials.

(15) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(16) A provider's authority to offer the Course Materials for which CPE credit is given begins on July 1, of the calendar year of approval and continues until the Course Materials are no longer required for the renewal of an expired license or registration. When requested in writing, the Board may authorize the use of these Course Materials prior to July 1, for industry related programs.

(17) All providers of Course Materials must meet the following time schedule each year for approval of Course Materials:

(A) At least 15 copies each of the draft version of the Course Materials must accompany the Course Material Provider application and be submitted to the Board's office no later than November 15 for Board approval at its January Board meeting.

(B) At least 15 copies each of the revised version of the Course Materials must be submitted to the Board's office no later than March 15, for Board approval at its April Board meeting.

(C) At least 15 copies each of all Course Materials that are approved at the Board's April Board meeting shall be provided to the Board's office in completed form no later than July 1 at no cost to the Board.

(18) A provider's failure to comply with this section constitutes grounds for disciplinary action against the provider or for disapproval of future applications for approval as a provider of Course Materials.

(b) Course Providers--The Board will annually approve only individuals, businesses or associations as Course Providers. Course Providers will offer classroom and correspondence instruction in the Course Materials used for the Continuing Professional Education (CPE) required for renewal of all licenses and applicable registrations issued under the Act. Board approval of Course Providers will be subject to all of the terms and conditions of this Section. The following minimum criteria will be used by the Board in considering approval of Course Providers:

(1) CPE courses shall be presented in one of the following formats:

(A) Six classroom hours presented on one day;

(B) Two sessions of three classroom hours each presented within a seven day period; or

(C) An approved correspondence course.

(2) Not less than three hours of the classroom course will be in the subjects of health protection, energy conservation and water conservation.

(3) Presentations must be based on the Course Materials and any other materials approved by the Board.

(4) In addition to Course Materials, presentations may include videos, films, slides or other appropriate types of illustrations and graphic materials related to the Course Materials.

(5) Course Providers shall limit the number of students for any CPE class to forty-five (45). Course Providers may allow a Course Instructor to admit additional students in excess of forty-five (45) who apply to the Course Instructor for admittance to the class on the day of the class, only if the additional students:

(A) are currently on active duty as members of the United States armed forces, a reserve component of the United States armed forces or the state military forces; and

(B) present valid identification to the Course Instructor which indicates the additional students' status under subparagraph (A) of this paragraph.

(6) A Course Provider may not advertise or promote the sale of any goods, products or services between the opening and closing hours of any CPE class.

(7) Each Course Provider shall furnish a Certificate of Completion of CPE to each Licensee and Registrant who completes its CPE course. The Certificate of Completion shall state the name of the Course Provider, the name of the student, the course year and the date the CPE course was completed.

(8) Each Course Provider shall, at its own expense and in a format approved by the Board, electronically transmit to the Board certification of each Licensee's and Registrant's completion of CPE requirements within forty-eight hours of completion.

(A) The Board may provide training to the Course Provider in the method for electronic transmittal.

(B) The Board may charge a fee to recover its costs for computer software and training in the use of the software to the Course Provider.

(9) Each Course Provider shall be reviewed annually by the Board to ensure that classes have been provided equitably across the state of Texas, except as provided in paragraph (15)(J) of this subsection.

(10) Each Course Provider must notify the Board at least 7 days before conducting a class or electronically post notice of the class schedule on the Course Provider's website at least 7 days before conducting a class.

(A) The notice shall contain the time(s) and place(s) where the classes will occur, and the name of the Course Instructor scheduled for each class.

(B) The notice shall be provided to the Board, whether or not the class is open to all licensees and registrants or limited to only a specific group or organization.

(C) The Course Provider shall provide a method to receive immediate notification from the scheduled Course Instructor, in the event that the Course Instructor is unable to provide instruction for the scheduled class; and

(i) the Course Provider shall make every effort to provide a substitute Course Instructor in order to avoid cancelling the scheduled class.

(ii) If cancellation of the class is unavoidable for any reason, the Course Provider shall make every effort to immediately notify each student affected by the cancellation; and

(iii) reschedule the cancelled class as soon as possible; and

(iv) notify the Board of the cancellation within 72 hours.

(11) Each Course Provider will perform self-monitoring of its classes and Course Instructors to ensure compliance with the Act and Board rules and reporting as required by the Board.

(12) Each Course Provider shall use only Course Instructors that have been approved by the Board. Each Course Provider shall

annually submit to the Board's office a list of Course Instructors it employs and the instructors' credentials for approval no later than March 15 for approval by the Board at its April Board meeting. The Board may approve additional Course Instructors who meet the requirements of subsection (c) of this section, at any regularly scheduled Board meeting.

(13) Prior to allowing Course Instructors to teach CPE, Course Providers must provide documentation to the Board showing the instructor's successful completion of Course Materials training.

(14) Course Instructors must comply with subsection (c) of this section. Course Providers shall notify the Board within 10 days of any change of an instructor's employment status with the Course Provider.

(15) Any individual, business or association who wishes to be a Course Provider shall apply to the Board for approval using application forms prepared by the Board. In order to be approved, the application must satisfy the Board as to the ability of the individual, business or association to provide quality instruction in the Course Materials as required in this section [Section] and must include:

(A) name and address of individual applicant,

(B) names and addresses of all officers, directors, trustees or members of the governing board of any business or association applicant,

(C) statement by individual applicant, and each officer, director, trustee or member of governing board as to whether he or she has ever been convicted of a felony,

(D) current certificate of good standing issued to the business or association by the Texas Comptroller of Public Accounts for business or association applicants,

(E) taxpayer identification number,

(F) facsimile number, statewide toll free telephone number, Internet web site and electronic mail address,

(G) fees to be charged to Licensees for attending the course, considering the following:

(i) If the Course Provider is not also a provider of Course Materials and will purchase Course Materials, the Course Provider may not charge the Licensees or Registrants more than its actual cost for the Course Materials supplied to the Licensees and Registrants by the Course Provider.

(ii) The fees charged to the Licensees and Registrants for attending the course will be determined by the Course Provider.

(H) an example of a Licensee's and Registrant's Certificate of Completion of CPE,

(I) CPE class scheduling plan,

(J) plan for providing courses equitably across the state. The [the] following individuals or businesses will not have to comply with this subparagraph:

(i) Employers applying to be approved as Course Providers for the purpose of providing CPE courses only to the employers' employees, and

(ii) Individuals who will not employ Course Instructors other than themselves[?],

(K) method for compiling statistical data regarding number of CPE classes conducted, students instructed and similar

data required to be submitted to the Board, in accordance with the following:

(i) Course Providers shall provide quarterly reports no later than December 15, March 15, June 15 and September 15, for the first year in which the Course Provider provides CPE courses;

(ii) Renewing Course Providers shall provide only annual reports, no later than September 15 of each year, for the preceding CPE course year.

(L) method for ensuring that only Licensees and Registrants who meet one or more of the following requirements may receive CPE credit for taking an CPE correspondence course:

(i) any Licensee or Registrant that lives outside of the State of Texas, or

(ii) lives in a county that does not have a city with a population in excess of 100,000, or

(iii) who has an expired license or registration that requires a CPE course that is no longer available in the classroom, or

(iv) who submits written proof to the Board from a physician stating the medical reason that the licensee or registrant is unable to attend a CPE class;

(M) identification of the Course Materials which will be used by the Course Provider; and

(N) the name, telephone number and electronic mail address of the individual who is designated by the Course Provider to responsible for answering inquiries and receiving notifications from the Board.

(16) The Board may refuse to accept any application for approval as a Course Provider that is not complete. The Board may deny approval of an application for any of the following reasons:

(A) failure to comply with the provisions of this section; or

(B) inadequate instruction of the materials required to be included in Course Materials.

(17) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(18) A Course Provider's authority to offer instruction in the Course Materials for which CPE credit is given, begins on July 1, of the calendar year of approval and expires on June 30, of the following calendar year after approval.

(19) All Course Provider applications must be submitted to the Board office no later than December 1, each year for approval at the Board's January meeting.

(20) The Board shall review Course Providers for quality in instruction. The Board shall also investigate and take appropriate action, up to and including revocation of authority to provide CPE, regarding complaints involving approved Course Providers.

(21) A provider's failure to comply with this section constitutes grounds for disciplinary action, up to and including revocation of authority to provide CPE, against the provider or for denial of future applications for approval as a Course Provider.

(c) Course Instructors--The Board will annually approve Course Instructors to provide the classroom instruction in the Course Materials used for the Continuing Professional Education (CPE) required for renewal of Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited Licensee and Plumbing Inspector Licenses and

Drain Cleaner, Drain Cleaner-Restricted Registrant and Residential Utilities Installer registrations. Board approval of Course Instructors will be subject to all of the terms and conditions of this Section. Course Providers must submit the application of an individual who wishes to be approved by the Board as a Course Instructor, as provided by subsection (b)(12) and (13) of this section. The following minimum criteria will be used by the Board in considering approval of Course Instructors:

(1) Instructors must be licensees of the Board and attend and successfully complete a Course Instructor Certification Workshop each year conducted by the Board (the Board will charge a fee to recover its costs for conducting the Course Instructor Certification Workshop).

(2) Instructors will be required to successfully complete a Board approved program of 160 clock hours which meets the following criteria. The Board will allow credit for approved courses.

(A) 40 hours to provide the Instructor with the basic educational techniques and instructional strategies necessary to plan and conduct effective training programs.

(B) 40 hours to provide the Instructor with the basic techniques and strategies necessary to analyze, select, develop, and organize instructional material for effective training programs.

(C) 40 hours to provide the Instructor with the basic principles, techniques, theories, and strategies to establish and maintain effective relationships with students, co-workers, and other personnel in the classroom, industry, and community.

(D) 40 hours to provide the Instructor with the basic principles, techniques, theories, and strategies to communicate effectively with the use of instructional media.

(E) To maintain his/her status as an approved Course Instructor, the Instructor shall undergo one of the aforementioned training programs every 12 months such that the entire training (160 hours) is complete within four years.

(3) A Course Instructor may not advertise or promote the sale of goods, products, or services between the opening and closing hours of any CPE class.

(4) As a Course Instructor and Licensee of the Board, a Course Instructor must comply with the Plumbing License Law and Board Rules, including §367.2 of this title (relating to [regarding] Standards of Conduct). An Instructor has a responsibility to his students and employer to:

(A) be well versed in and knowledgeable of the Course Materials and ensure that classroom presentations are based only on the Course Materials and other materials approved by the Board,

(B) maintain an orderly and professional classroom environment,

(C) ensure that only students who receive six contact hours of instruction (excluding any time spent on breaks from instruction) receive credit for attending the CPE class,

(D) notify the Course Provider immediately, if the Course Instructor is unable to provide instruction for a CPE class that the instructor was scheduled to instruct, to allow the Course Provider to make every effort to provide a substitute Course Instructor to avoid cancelling the class, and

(E) coordinate with the Course Provider to develop an appropriate method for handling disorderly and disruptive students. A Course Instructor shall report to the Course Provider and the Board,

any non-responsive and disruptive student who attends a CPE course. The Board may deny CPE credit to any such student and require, at the student's expense, successful completion of an additional CPE course to receive credit.

(5) The Board shall review Course Instructors for quality of instruction. The Board shall also respond to complaints regarding Course Instructors.

(6) A Course Instructor's failure to comply with this section constitutes grounds for disciplinary action against the Instructor or for disapproval of future applications for approval as a Course Instructor.

(7) At the beginning of each CPE class, the Course Instructor shall provide each individual student with a separate single page handout containing the text of paragraphs (4) - (6) of this subsection, in a format provided by the Board.

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

Filed with the Office of the Secretary of State on November 1, 2010.

TRD-201006159

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: December 12, 2010

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



CHAPTER 367. ENFORCEMENT

22 TAC §367.7

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §367.7, which sets forth disciplinary actions the Board may take for certain violations of the Plumbing License Law and Board Rules.

The amendments to §367.7 are proposed in response to the passage of Senate Bill (SB) 1410, 81st Regular Legislative Session. The proposed amendments reflect revisions made to the Plumbing License Law by SB 1410, including §§1301.002, 1301.451, 1301.452, 1301.5045 and 1301.707.

The proposed amendments also serve to provide clarification of the requirements of Board Rule §367.7 by eliminating an obsolete reference to Chapter 365, relating to licensing and registration. Further clarification is proposed by adding language which identifies a civil penalty as being that described in §1301.507 of the Plumbing License Law.

Economic Impact Statement and Regulatory Flexibility Analysis

Texas Government Code §2006.002, as amended by the 80th Legislature, House Bill (HB) 3430, requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses. The proposed amendments to §367.7 will have no adverse economic impact on small businesses. The proposed amendments to §367.7 simply reflect the amendments made to the Plumbing License Law and provide clarification of existing requirements and, therefore, have no adverse economic impact on small businesses.

Robert L. Maxwell, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal impact on state and local government as well as small businesses and persons required to comply with these amendments.

Mr. Maxwell also has determined that each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a clearer understanding of the basis for disciplinary action taken by the Board for violations of the Plumbing License Law or Board Rules. Public health and safety will benefit from plumbing performed by individuals who follow clear standards and understand the possible consequences of failing to abide by the Plumbing License Law and Board Rules.

Comments on the proposed rule changes may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §367.7 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 81st Legislature ("Plumbing License Law" or "Law"), §1301.251, §1301.002, Subchapter I, Subchapter J, Subchapter N, 22 TAC Chapter 367, and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.002 defines a plumbing inspector as a person who must be employed or contracted with a political subdivision. Subchapter I sets forth disciplinary powers of the Board and grounds for disciplinary action. Subchapter J describes other penalties and enforcement provisions. Subchapter N sets forth the procedures for the imposition of administrative penalties explains legal rights under law afforded to alleged violators. Chapter 367 sets forth enforcement provisions, disciplinary procedures, requirements for persons who perform plumbing, and legal rights afforded to alleged violators of the Plumbing License Law and Board Rules. The amendments to §367.7 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, HB 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

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

§367.7. *Violations of Standards and Practices.*

(a) The Board may take disciplinary actions as provided by Subchapter I (relating to Disciplinary Procedures), Subchapter J (relating to Other Penalties and Enforcement Provisions), Subchapter N (relating to Administrative Penalty) of the Plumbing License Law and Chapter 367 (relating to Enforcement) of the Board Rules, for any violation of the Plumbing License Law or Board Rules. [specified in chapter 365 of these rules (relating to Licensing and Registration) in the event of any violation of any of these requirements.]

(b) A person commits a Class C misdemeanor by:

(1) Violating the act or the rules adopted under it;

(2) Performing non-exempt plumbing work without holding a valid license, registration or endorsement issued through the Board;

(3) Employing an unlicensed or unregistered individual to perform activities that by law require the skills and supervision of an individual registered or licensed by the Board without providing for that individual's supervision as specified by the Act and Board Rules;[-]

(4) Proclaiming through advertising or by producing another's plumbing license, registration or license or registration number or by other means claiming that:

(A) an individual is a licensed plumber or is registered with the Board when in fact that individual is not a plumber licensed or registered by the Board, or

(B) that a person or plumbing company has secured the services of a Responsible Master Plumber as specified in [Section] §367.3 of this title, when in fact that company has not;

(5) Acting, serving, or representing oneself as a Plumbing Inspector, or conducting plumbing inspections as defined in the Act and Board Rules without holding a valid Plumbing Inspector License and without being employed by, or an independent contractor for a political subdivision or state agency.

(c) In addition to any other disciplinary action the Board may take, a [A] person who violates any provision of the act or these rules or any other order of the Board is subject to a civil penalty, under §1301.507 of the Plumbing License Law, of not less than \$50 or more than \$1,000 for each violation and for each day of violation after notification.

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 November 1, 2010.

TRD-201006160

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: December 12, 2010

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



22 TAC §367.10

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §367.10, which sets forth the requirements for the imposition of an administrative penalty and associated actions for violations of the Plumbing License Law and Board Rules.

The amendments to §367.10 are proposed in response to the passage of Senate Bill (SB) 1410, 81st Regular Legislative Session. The proposed amendments blend certain provisions of the Plumbing License Law regarding administrative penalties found in Subchapter I, Disciplinary Procedures, Subchapter J, Other Penalties and Enforcement Provisions, and Subchapter N, Administrative Penalty, into one rule to better clarify the authority and procedures for the imposition of administrative penalties and ensure all rights under law are afforded to an alleged violator.

Economic Impact Statement and Regulatory Flexibility Analysis
Texas Government Code §2006.002, as amended by the 80th Legislature, House Bill (HB) 3430, requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses. The proposed amendments to §367.10 will have no adverse economic impact on small businesses. The proposed amendments to §367.10 simply reflect requirements and amendments made to the Plumbing License

Law and will, therefore, have no adverse economic impact on small businesses.

Robert L. Maxwell, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal impact on state and local government as well as small businesses and persons required to comply with these amendments.

Mr. Maxwell also has determined that each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a clearer understanding of the basis for the imposition of administrative penalties and legal rights afforded to alleged violators provided in the Plumbing License Law. Public health and safety will benefit from plumbing performed by individuals who follow clear standards and understand the possible consequences of failing to abide by the Plumbing License Law and Board Rules.

Comments on the proposed rule changes may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §367.10 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 81st Legislature ("Plumbing License Law" or "Law"), §1301.251, Subchapter I, Subchapter J, Subchapter N, and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Subchapter I sets forth disciplinary powers of the Board and grounds for disciplinary action. Subchapter J describes other penalties and enforcement provisions. Subchapter N sets forth the procedures for the imposition of administrative penalties, and explains legal rights under law afforded to alleged violators. Amendments to §367.10 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, HB 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

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

§367.10. Administrative Penalty.

(a) If the Enforcement Committee decides to pursue an administrative penalty under the Administrative Penalty Schedule adopted by the Board, the Director of Enforcement shall issue a Notice of Alleged Violation to the Respondent which must include a brief summary of the alleged violation, state the amount of the penalty pursued and inform the Respondent of the Respondent's right to a hearing before the State Office of Administrative Hearings on the occurrence of the violation or the amount of the penalty.

(b) Not later than the 20th day after the Notice of Alleged Violation is received by the Respondent, the Respondent, in writing, shall:

(1) agree to settle the matter without a formal hearing before the State Office of Administrative Hearings and accept the determination and settlement penalty recommended by the Enforcement Committee; or

(2) make a request for a formal hearing before the State Office of Administrative Hearings on the occurrence of the violation, the amount of the penalty, or both.

(c) If the Respondent agrees to settle the matter without a formal hearing and accepts the determination and amount of penalty pursued by the Enforcement Committee, the Respondent shall pay the

penalty to the Board not later than 60 days following the date that the Notice of Alleged Violation was issued.

(d) The Enforcement Committee shall provide a report to the Board stating a summary of the facts or allegations against the Respondent and the amount of the recommended administrative penalty agreed to by the Enforcement Committee and the Respondent. The Board, by order, shall approve the recommended penalty. If the Respondent subsequently violates the Board's Order adopting the agreement between the Respondent and the Enforcement Committee by failing to pay the penalty timely, the Board may:

(1) refuse to renew the Respondent's license or registration; and

(2) refuse to issue a new license or registration to the Respondent, under §1310.451 of the Plumbing License Law.

(e) The Enforcement Committee shall set a formal hearing on the matter as a contested case before an administrative law judge at the State Office of Administrative Hearings if:

(1) the Respondent requests a formal hearing not later than the 20th day after the Notice of Alleged Violation is received by the Respondent;

(2) the Respondent fails to respond in writing to the Notice of Alleged Violation not later than the 20th day after the Notice of Alleged Violation is received by the Respondent; or

(3) the Respondent fails to pay the agreed settlement penalty to the Board not later than 60 days following the date that the Notice of Alleged Violation was issued.

(f) Following the hearing the administrative law judge shall issue a proposal for decision to the Board containing findings of facts and conclusions of law. [The Board shall not renew the license or registration of a Respondent who fails to:]

~~[(1) respond in writing to the Notice of Alleged Violation not later than the 20th day after the notice was received by the Respondent; or]~~

~~[(2) pay the settlement penalty to the Board not later than 60 days following the date that the Notice of Alleged Violation was issued, if the Respondent previously agreed to the penalty in written response to the Notice of Alleged Violation.]~~

(g) Based on the proposal for decision, including the findings of fact and conclusions of law, the Board shall issue an Order stating its decision in the contested case and a notice to the Respondent of the Respondent's right to judicial review of the Order.

(h) When the Board's Order includes the imposition of an administrative penalty:

(1) not later than the 30th day after the date that the Board's Order becomes final:

(A) the Respondent shall pay the penalty to the Board;
or

(B) the Respondent shall file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both, in accordance with §1301.707 or §1301.708 of the Plumbing License Law.

(2) after all opportunities for judicial review have passed and it is determined that the Respondent owes the penalty and fails to pay the penalty timely:

(A) the Board is authorized to refuse to renew the Respondent's license or registration and refuse to issue a new license or

registration to the Respondent, under §1301.707 of the Plumbing License Law; and

(B) the Attorney General may sue the Respondent to collect the penalty under §1301.713 of the Plumbing License Law.

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 November 1, 2010.

TRD-201006161

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: December 12, 2010

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



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.10

The Texas State Board of Examiners of Psychologists proposes amendments to §463.10, Provisionally Licensed Psychologists. The amendments would recognize the quality of doctoral programs in psychology that are accredited by the American Psychological Association.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email brenda.skiff@tsbep.state.tx.us.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.10. *Provisionally Licensed Psychologists.*

(a) Application Requirements. An application for provisional licensure as a psychologist includes, in addition to the requirements set forth in Board rule §463.5 of this title (relating to Application File Requirements), an official transcript which indicates that the applicant has received a doctoral degree in psychology. Additionally, the applicant

must meet the requirements of §501.255 of the Psychologists' Licensing Act.

(b) Degree Requirements.

(1) The applicant's transcript must state that the applicant has a doctoral degree that designates a major in psychology. Additionally, the doctoral degree must be from a program accredited by the American Psychological Association or from a regionally accredited institution.

(2) The substantial equivalence of a doctoral degree received prior to January 1, 1979, based upon a program of studies whose content is primarily psychological means a doctoral degree based on a program which meets the following criteria:

(A) Post-baccalaureate program in a regionally accredited institution of higher learning. The program must have a minimum of 90 semester hours, not more than 12 of which are credit for doctoral dissertation and not more than six of which are credit for master's thesis.

(B) The program, wherever it may be administratively housed, must be clearly identified and labeled. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists.

(C) The program must stand as a recognizable, coherent organizational entity within the institution. A program may be within a larger administrative unit, e.g., department, area, or school.

(D) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines. The program must have identifiable faculty and administrative heads who are psychologists responsible for the graduate program. Psychology faculty are individuals who are licensed or provisionally licensed or certified psychologists, or specialists of the American Board of Professional Psychology (ABPP), or hold a doctoral degree in psychology from a regionally accredited institution.

(E) The program must be an integrated, organized sequence of studies, e.g., there must be identifiable curriculum tracks wherein course sequences are outlined for students.

(F) The program must have an identifiable body of students who matriculated in the program.

(G) The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology. The supervised field work or internship must have been a minimum of 1,500 supervised hours, obtained in not less than a 12 month period nor more than a 24 month period. Further, this requirement cannot have been obtained in more than two placements or agencies.

(H) The curriculum shall encompass a minimum of two academic years of full-time graduate studies for those persons who have enrolled in the doctoral degree program after completing the requirements for a master's degree. The curriculum shall encompass a minimum of four academic years of full-time graduate studies for those persons who have entered a doctoral program following the completion of a baccalaureate degree and prior to the awarding of a master's degree. It is recognized that educational institutions vary in their definitions of full-time graduate studies. It is also recognized that institutions vary in their definitions of residency requirements for the doctoral degree.

(I) The following curricular requirements must be met and demonstrated through appropriate course work:

(i) Scientific and professional ethics related to the field of psychology.

(ii) Research design and methodology, statistics.

(iii) The applicant must demonstrate competence in each of the following substantive areas. The competence standard will be met by satisfactory completion at the B level of a minimum of six graduate semester hours in each of the four content areas. It is recognized that some doctoral programs have developed special competency examinations in lieu of requiring students to complete course work in all core areas. Graduates of such programs who have not completed the necessary semester hours in these core areas must submit to the Board evidence of competency in each of the four core areas.

(I) Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psycho-pharmacology.

(II) Cognitive-affective basis of behavior: Learning, thinking, motivation, emotion.

(III) Social basis of behavior: social psychology, group processes, organizational and system theory.

(IV) Individual differences: personality theory, human development, abnormal psychology.

(J) All educational programs which train persons who wish to be identified as psychologists will include course requirements in specialty areas. The applicant must demonstrate a minimum of 24 hours in his/her designated specialty area.

(3) Any person intending to apply for provisional licensure under the substantial equivalence clause must file with the Board an affidavit showing:

(A) Courses meeting each of the requirements noted in paragraph (2) of this subsection verified by official transcripts;

(B) Information regarding each of the instructors in the courses submitted as substantially equivalent;

(C) Appropriate, published information from the university awarding the degree, demonstrating that in paragraph (2)(A) - (J) of this subsection have been met.

(c) An applicant for provisional licensure as a psychologist who is accredited by Certificate of Professional Qualification in Psychology (CPQ) or the National Register or who is a specialist of ABPP will have met the following requirements for provisional licensure: submission of an official transcript which indicates the date the doctoral degree in psychology was awarded or conferred, submission of documentation of the passage of the national psychology examination at the doctoral level at the Texas cut-off score, and submission of three acceptable reference letters. All other requirements for provisional licensure must be met by these applicants. Additionally, these applicants must provide documentation sent directly from the qualifying entity to the Board office declaring that the applicant is a current member in the organization and has had no disciplinary action from any state or provincial health licensing board.

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

Filed with the Office of the Secretary of State on October 29, 2010.

TRD-201006131

Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: December 12, 2010
For further information, please call: (512) 305-7706



CHAPTER 465. RULES OF PRACTICE

22 TAC §465.2

The Texas State Board of Examiners of Psychologists proposes amendments to §465.2, Supervision. The amendments will add text back to this rule that was erroneously removed by a prior amendment.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email brenda.skiff@tsbep.state.tx.us.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.2. *Supervision.*

(a) A licensee is responsible for the professional supervision of all individuals that the licensee employs or utilizes to provide psychological services of any kind.

(b) Licensees ensure that their supervisees have legal authority to provide psychological services in adherence to Board rules.

(c) Licensees provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee and the type of psychological services.

(d) Licensees must be competent to perform any psychological services being provided under their supervision.

(e) Licensees shall document their supervision activities in writing.

(f) Licensees delegate only those responsibilities that supervisees may legally and competently perform.

(g) Licensees utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance.

(h) For purposes of this section [rule], the term "supervision" does not apply to the supervision of purely administrative or employment matters.

(i) A licensee who is practicing subject to an agreed order is not qualified to provide supervision for a person seeking to fulfill the internship or practicum requirements set by Board rule §463.8 of this title (relating to Licensed Psychological Associate), §463.9 of this title (relating to Licensed Specialist in School Psychology), or §463.10 of this title (relating to Provisionally Licensed Psychologists).

(j) Licensed psychological associates and provisionally licensed psychologists must be under the supervision of a licensed psychologist and may not engage in independent practice.

(k) [(j)] A licensee providing supervision must be actively licensed.

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 October 29, 2010.

TRD-201006132
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: December 12, 2010
For further information, please call: (512) 305-7706



22 TAC §465.18

The Texas State Board of Examiners of Psychologists proposes amendments to §465.18, Forensic Services. The amendments would allow the rule to comply with Texas Family Code, Title 5, Subtitle B, Chapter 153, Subchapter K.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email brenda.skiff@tsbep.state.tx.us.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.18. *Forensic Services.*

(a) In General.

(1) A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding, such as a child custody determination or a divorce, must comply with all applicable Board rules concerning forensic services

regardless of whether the licensee is acting as a factual witness or an expert.

(2) Licensees who engage in forensic services must have demonstrated appropriate knowledge of and competence in all underlying areas of psychology about which they provide such services.

(3) All forensic opinions, reports, assessments, and recommendations rendered by a licensee must be based on information and techniques sufficient to provide appropriate substantiation for each finding.

(4) A licensee who provides forensic services must comply with all other applicable Board rules and state and federal law relating to the underlying areas of psychology relating to those services.

(b) Limitation on Services.

(1) A licensee who is asked to provide an opinion concerning an area or matter about which the licensee does not have the appropriate knowledge and competency to render a professional opinion shall decline to render that opinion.

(2) A licensee who is asked to provide an opinion concerning a specific matter for which the licensee lacks sufficient information to render a professional opinion shall decline to render that opinion unless the required information is provided.

(3) A licensee shall not render a written or oral opinion about the psychological characteristics of an individual without conducting an examination of the individual unless the opinion contains a statement that the licensee did not conduct an examination of the individual.

(4) A written or oral opinion about the psychological characteristics of an individual rendered by a licensee who did not conduct an examination of that individual must contain clarification of the extent to which this limits the reliability and validity of the opinion and the conclusions and recommendations of the licensee.

(5) When seeking or receiving court appointment or designation as an expert for a forensic evaluation a licensee specifically avoids accepting appointment or engagement for both evaluation and therapeutic intervention for the same case. A licensee provides services in one but not both capacities in the same case.

(c) Describing the Nature of Services. A licensee must document in writing that subject(s) of forensic evaluations or their parents or legal representative have been informed of the following:

(1) The nature of the anticipated services (procedures);

(2) The specific purpose and scope of the evaluation;

(3) The identity of the party who requested the psychologist's services;

(4) The identity of the party who will pay the psychologist's fees and if any portion of the fees is to be paid by the subject, the estimated amount of the fees;

(5) The type of information sought and the uses for information gathered;

(6) The people or entities to whom psychological records will be distributed;

(7) The approximate length of time required to produce any reports or written results;

(8) Applicable limits on confidentiality and access to psychological records; and

(9) Whether the psychologist has been or may be engaged to provide testimony based on the report or written results of forensic psychological services in a legal proceeding.

(d) Child Custody Evaluations.

(1) The primary consideration in a child custody evaluation is to assess the individual and family factors that affect the best psychological interests of the child. Other factors or specific factors may also be addressed given a specific forensic services engagement.

(2) Child custody evaluations generally involve an assessment of the adults' capacity for parenting, an assessment of the psychological functioning, developmental needs, and wishes of the child, and the functional ability of each parent to meet such needs. Other socioeconomic factors, family, collateral and community resources may also be taken into secondary consideration.

(3) The role of the psychologist in a child custody forensic engagement is one of a professional expert. The psychologist cannot function as an advocate and must retain impartiality and objectivity, regardless of whether retained by the court or a party to the divorce. The psychologist must not perform an evaluation where there has been a prior therapeutic relationship with the child or the child's immediate family members, unless required to do so by court order.

(4) The scope of the evaluation is determined by the psychologist based on the referral question(s). Licensees must comprehensively perform the evaluation based on the scope of the referral, but not exceed the scope of the referral.

(e) Child Visitation. Forensic opinions as to child visitation and parenting arrangements must be supported by forensic evaluations.

(1) Licensees may provide treatment or evaluation, but not both in the same case.

(2) A treating psychologist may express an opinion as to the progress of treatment, but shall refrain from rendering an opinion about child visitation or parenting arrangements, unless required to do so by court order.

(f) Parenting Facilitators.

(1) The title "parenting facilitator" is defined in the Texas Family Code, Title 5, Subtitle B, Chapter 153, Subchapter K. Parenting Plan, Parenting Coordinator, and Parenting Facilitator.

(2) The Board's jurisdiction over licensees who also accept engagements as parenting facilitators is limited to its enforcement of Board rules. The Family Code sets forth procedures for the qualifications, duties, appointment and removal, reporting, record retention, and compensation of parenting facilitators. The Family Code also provides procedures for disclosure of conflicts of interest by parenting facilitators. In the event of conflict between the Family Code and this chapter, Rules of Practice, the Family Code controls, pursuant to §461.14 of this title (relating to Conflict Between Laws and Board Rules).

(3) A parenting facilitator who is also a licensed psychologist in Texas is a provider of forensic psychological services and must comply with all other applicable Board rules and state and federal laws relating to the underlying areas of psychology relating to those services.

(4) Participants in parenting facilitation are not patients as defined in this chapter and in Texas Health and Safety Code §611.001. Records created during parenting facilitation are not confidential.

(5) Parenting facilitators must comply with the Texas Family Code at §153.6061 as to duties and §153.6101 as to qualifications, and with the "Guidelines for Parenting Coordination" developed by the

Association of Family and Conciliation Courts Task Force on Parenting Coordination, dated May 2005.

(6) The following psychologist-parenting facilitator practice standards are set forth consistent with Texas Family Code §153.6101.

(A) Parenting facilitators licensed by the Board shall comply with the standard of care applicable to the license to practice psychology in Texas.

(B) Psychologist-parenting facilitators meet all requirements of Texas Family Code §153.6101, including active licensure to practice as a psychologist in Texas; completion of 8 hours of family violence dynamics training provided by a family violence service provider; 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court; 24 classroom hours of training in the fields of family dynamics, child development, and family law; and 16 hours of training in the laws governing parenting coordination and parenting facilitation and the multiple styles and procedures used in different models of service.

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 October 29, 2010.

TRD-201006133

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: December 12, 2010

For further information, please call: (512) 305-7706



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 104. CHILDREN PARTICIPATING IN RODEOS

25 TAC §§104.1 - 104.5

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§104.1 - 104.5 concerning children participating in rodeos.

BACKGROUND AND PURPOSE

The new sections comply with Health and Safety Code, Chapter 768 (Senate Bill 2505, 81st Legislature, Regular Session, 2009) which requires the establishment of standards for protective vests and bull riding helmets for children who participate in rodeos; and requirements for an educational program on safety, including the proper use of protective gear for children planning to participate in rodeos.

Research and clinical experience in the sport of bull riding has provided evidence there is a high incidence of head, facial and body injury in bull riders. This sport has been implicated in up to 37% of rodeo injuries and is one of the most dangerous sporting

activities of the modern era. In one study, the incidence was found to be 1.5 head and facial injuries per 100 rides. This can be compared with Canadian intercollegiate ice hockey in which the incidence of concussion was 1.55 per 1,000 athlete exposures and high school football in the United States in which as many as 5.6% of high school players will suffer a concussion per season.

Some recent evidence has indicated that bull riders who wear protective headgear are much less likely to suffer head injuries. Research is very limited in this area and virtually non-existent for protective vests. It is known, however, that most bull-related injuries are sustained after the fall when the rider is kicked or gored in the upper or lower portion of the torso. So, it stands to reason that wearing a protective vest would be recommended. Research has been conducted on wearing protective gear while competing in auto racing, baseball, bicycle racing, football, ice hockey, horse racing and skiing. Protective vests and headgear reduce the incidence of injury in these activities. However, most of the benefits of wearing protective vests and headgear during bull riding are derived from anecdotal experience accounts and observation.

In Texas, children as young as four years old compete in live-stock riding competitions, and bull riding can begin with children of middle school age. Health and Safety Code, Chapter 768, was written to require children participating in rodeos to wear a protective vest and bull riding helmet; to require the department to develop standards for the vests and helmets; and to require children participating in rodeos associated with schools to participate in an educational program on safety, including the proper use of protective gear.

Because of complex interactions of variables such as bull motion, size and weight; rider size, direction, point of impact and proper fit of protective gear; serious injury and or death can result from both low and high energy impact even when protective gear is worn. If adopted, it is expected that the new rules will help reduce the impact of some of the forces reaching the head and body that may occur in bull riding and limit contact with the facial features of the rider to provide enough protection to reduce the risk of injury that would occur without protective gear. Additional protection from injury is possible as a result of the prerequisite educational program on safety, required of children participating in rodeos.

SECTION BY SECTION SUMMARY

New §104.1 states the purpose of the sections which is to establish standards for protective vests and bull riding helmets for children who participate in rodeos; and requirements for a school-based educational program on safety, including the proper use of protective gear, for children planning to participate in rodeos.

New §104.2 defines the terms and phrases used in the proposed rule relating to rodeo, protective gear, education guideline development and school rodeo involvement.

New §104.3 presents specific standards for protective vests and bull riding helmets; specifies to whom the rule applies and addresses parent non-compliance, specified in "Failure of a Parent to Comply," Health and Safety Code, §768.002.

New §104.4 addresses requirements for the educational program on safety and specifies to whom the standard applies; when the program must take place; presents participation requirements and requirements for structuring the educational content of the program.

New §104.5 states when the rule will become effective and why.

FISCAL NOTE

Lauri Kalanges, Acting Director, Health Promotion and Chronic Disease Prevention Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local government as a result of enforcing and administering the sections as proposed. But, some local governments (school districts) will incur costs to purchase video and commence educational instruction in rodeo safety, but these requirements are imposed by the statute, not the rule.

MICRO-BUSINESSES AND SMALL BUSINESSES IMPACT ANALYSIS

Ms. Kalanges has also determined that those micro-businesses and small businesses engaged in the production of videos for instruction in rodeo safety may need to revise their instructional content to comply with these rules or risk losing sales within the State of Texas, but this is hypothetical because it is not known if any such businesses are engaged in such production, nor if the revision of products will be necessary for those who are. Those micro-businesses and small businesses engaged in the production of bull riding helmets and vests may need to revise their design to comply with these rules or risk losing sales within the State of Texas, but this is hypothetical because it is not known if any such businesses are engaged in the manufacture of such products, nor if the revision of products will be necessary for those who are. Other than these, there will be no adverse impact on micro-businesses or small businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that micro-businesses or small businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There may or may not be economic costs to persons who are required to comply with the sections as proposed. Some individual children or their parents will incur costs to purchase compliant helmets and vests, but this requirement is imposed by the statute not the rules. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC BENEFIT

Ms. Kalanges 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 administering the sections will be: (1) an increased awareness by parents, teachers, children and the general population of the safety risks of children participating in rodeos and the steps that can be taken to reduce risk; (2) implementation of an educational program in schools on safety standards for children participating in rodeos which may reduce the risk of injury or death to children participating in bull riding; (3) an increase in the number of children wearing protective gear during bull riding competition and practice; and (4) a reduction in the incidents of head and other bodily injury or death to children participating in bull riding.

PUBLIC COMMENT

Comments on the proposal may be submitted to Ellen Smith, Information Specialist, School Health Program, Texas Department of State Health Services; by mail at Mail Code 1923, P.O. Box 149347, Austin, Texas 78714-9347; by email to ellen.smith@dshs.state.tx.us; by fax at (512) 458-4555; or by phone at (512) 458-7111, extension 2140. 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.

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §768.004, which requires the Executive Commissioner of the Health and Human Services Commission to adopt rules with standards for bull riding helmets, protective vests, and rodeo safety educational programs; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new sections affect the Health and Safety Code, Chapters 768 and 1001; and Government Code, Chapter 531.

§104.1. Purpose.

The purpose of these sections is to establish standards for protective vests and bull riding helmets for children who participate in rodeos; and requirements for an education program on safety, including the proper use of protective gear for children planning to participate in rodeos. These standards are implemented under Health and Safety Code, Chapter 768.

§104.2. Definitions.

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

- (1) Bull riding helmet--A rodeo helmet that is designed to provide substantial protection for a person's head and face during bull riding.
- (2) Child or Children--A person under 18 years of age.
- (3) National Health Education Standards (NHES)--A statement from The Joint Committee on National Health Education Standards. *National Health Education Standards: Achieving Excellence*

(2nd Edition). Atlanta: American Cancer Society, 2007, a nationally-accepted framework of health standards and expectations which aligns curriculum, instruction and assessment practices to promote personal, family and community health.

(4) Promote--A primary or secondary school that helps or encourages; or advertises or advocates for a rodeo event to exist or flourish; or, encourages or advertises rodeo ticket or rodeo-related merchandise sales; or demonstrates acceptance of rodeo through advertising or other print or electronic publicity such as posters, Web sites or radio announcements.

(5) Protective vest--Protective clothing that covers a person's chest and torso to prevent or mitigate injury to those areas.

(6) Rodeo--An exhibition or competition, without regard to whether the participants are compensated, involving activities related to cowboy skills, including:

(A) riding a horse, with or without a saddle, with the goal of remaining on the horse while it attempts to throw off the rider;

(B) riding a bull;

(C) roping an animal, including roping as part of a team;

(D) wrestling a steer; and

(E) riding a horse in a pattern around preset barrels or other obstacles.

(7) Sponsor--A primary or secondary school that in any way finances, or provides other in-kind resources or services for a rodeo event carried out by another person or group; or, that is in any other way, responsible for a rodeo event.

(8) Texas Essential Knowledge and Skills (TEKS)--The state-mandated set of learning objectives for students in Texas public schools.

§104.3. Standards for Protective Vests and Bull Riding Helmets for Children Who Participate in Rodeos.

A child may not engage in, and a parent or legal guardian of the child may not knowingly or recklessly permit the child to engage in, bull riding, including engaging in bull riding outside a rodeo for the purpose of practicing bull riding, unless the child is wearing a protective vest and bull riding helmet. To satisfy the requirement of this section, the following applies.

(1) The bull riding helmet worn by the child must meet the American Society for Testing and Materials (ASTM) standards for "Protective Headgear with Faceguard Used in Bull Riding; F 2530-05" or the most current version of the standards.

(2) The protective vest worn by the child must meet ASTM standards for "Body Protectors Used in Horse Sports and Horseback Riding; F 1937 - 04" or the most current version of the standards.

(3) These standards apply to the following.

(A) Rodeos associated with primary and secondary schools.

(B) Schools that sponsor, advertise or promote; or, are otherwise associated with a rodeo in which children who attend the school are likely to participate.

(C) Children who are participating in or engaging in bull riding outside a rodeo for the purpose of practicing bull riding.

(D) A parent or legal guardian of a child engaging in bull riding including outside the rodeo for the purpose of practice.

(4) "Failure of a parent to comply" statement applies to these standards as specified in Health and Safety Code, §768.002.

§104.4. Requirements for an Educational Program on Safety.

(a) Applies only to a primary or secondary school that sponsors, advertises or promotes; or, otherwise is associated with a rodeo in which children who attend the school are likely to participate.

(b) Not more than one year before the first day of a rodeo associated with a primary or secondary school, the school will conduct a mandatory education program each school year on safety for children planning on participating in the rodeo.

(c) A child may not participate in a rodeo associated with a child's school during a school year unless the child has completed the educational program.

(d) The educational program will have the following requirements.

(1) The educational program must cover the proper use of rodeo protective gear.

(2) Criteria for program development should be based on the NHES for designing injury prevention and safety curricula.

(3) Information taught must reflect the required age-appropriate TEKS that promote healthy behavior and reduce personal risk as it relates to injury prevention.

(4) The method of delivery of the educational program may be an instructional video or any other instructional medium that contains information consistent with the TEKS and NHES.

(5) Compliance with this section is equivalent to approval by the Department of State Health Services.

§104.5. Compliance Date of Rules.

To allow preparation for children to fully participate in rodeos, these rules will be effective August 1, 2011.

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 October 29, 2010.

TRD-201006130

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: December 12, 2010

For further information, please call: (512) 458-7111 x6972



CHAPTER 125. SPECIAL CARE FACILITIES SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §125.36

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §125.36, concerning the regulation of special care facilities.

BACKGROUND AND PURPOSE

The new section is necessary to promulgate a rule in compliance with House Bill 3737, 81st Legislature, Regular Session, 2009. House Bill 3737 amended Health and Safety Code, Chapter 250, which requires special care facilities to conduct nurse aide registry, employee misconduct registry, and criminal history checks on employees and applicants for employment in special care facilities.

The department regulates special care facilities as required by Health and Safety Code, Chapter 248.

SECTION-BY-SECTION SUMMARY

The new §125.36 requires special care facilities to comply with the provisions of Health and Safety Code, Chapter 250; specifies that an unlicensed applicant or employee excludes licensed health professionals and defines a licensed health professional; requires a facility to obtain criminal history record information from the Department of Public Safety for all unlicensed applicants for employment; prohibits a facility from employing unlicensed applicants with certain convictions or contraindications to employment; requires a facility to search the nurse aide registry and the employee misconduct registry for all unlicensed applicants for employment; prohibits a facility from employing an applicant with a finding concerning abuse, neglect, or mistreatment of a patient, or misappropriation of a patient's property; requires a facility to obtain a criminal history check on all unlicensed employees; requires a facility to annually search the nurse aide registry and employee misconduct registry for all unlicensed employees and maintain documentation in the employee's personnel file; requires a facility to immediately discharge employees with a finding concerning abuse, neglect, or mistreatment of a patient, or misappropriation of a patient's property, or a conviction of a crime that bars employment under Health and Safety Code, §250.006, or that is a contraindication to employment; allows a facility to hire an applicant after the nurse aide registry and employee misconduct registry check but before obtaining the criminal conviction check in a justified and documented emergency; and requires a facility to ensure that an employee has no direct contact with a patient until criminal history record is obtained and employability verified.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack has also determined that there may be a negative effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses may be required to alter their business practices in order to comply with the section. The provisions of the rule related to criminal history and nurse aide registry, and employee misconduct registry check may impact special care facilities of any size.

Special care facilities may incur costs in staff time conducting and documenting criminal history and registry checks, and may incur costs related to fees for obtaining criminal history information. All currently licensed special care facilities are non-profit organizations.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There may be economic costs to persons who are required to comply with the proposed new section, as described in the small business and micro-business impact analysis. There is no anticipated impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Clack has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The rule protects the health, safety, and welfare of patients receiving services in special care facilities, special care facility personnel, and the public. Alternative methods of compliance have been provided in this rule to allow facilities the flexibility to make business decisions based on their needs.

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 Beth Pickens, Health Care Quality Section, Division of Regulatory Services, Department of State Health Services, P.O. Box 149347, Mail Code 2822, Austin, Texas 78714-9347, (512) 834-6752 or by email to beth.pickens@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 rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new rule is authorized by Health and Safety Code, §248.026, concerning rules and minimum standards for the licensing and regulation of special care facilities; Health and Safety Code, Chapter 250, concerning nurse aide registry and criminal history checks of employees and applicants for employment in certain facilities serving the elderly, persons with disabilities, or persons with terminal illness; 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 the Health and Safety Code, Chapters 248, 250, and 1001; and Government Code, Chapter 531.

§125.36. Criminal History and Nurse Aide Registry Checks of Employees and Applicants for Employment.

(a) As used in this section, an unlicensed applicant or employee excludes licensed health professionals. A licensed health professional is an individual who is authorized and holds a license issued by the State of Texas to practice in the health care field. This term "licensed health professional" includes, but is not limited to, a physician, physician assistant, advanced practice registered nurse, registered nurse, licensed vocational nurse, social worker, counselor, dietitian, pharmacist, or psychologist.

(b) Each facility shall comply with the provisions of Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illnesses).

(c) The facility shall obtain criminal history record information from the Department of Public Safety (DPS) for all unlicensed applicants for employment.

(1) A facility shall obtain the information directly from the DPS or by paying a private agency to obtain criminal history record information directly from the DPS.

(2) If an applicant has been convicted of an offense under Health and Safety Code, §250.006 (relating to Convictions Barring Employment), the facility shall determine whether the conviction bars the applicant from employment or whether the conviction is a contraindication to employment with the patients the facility serves.

(3) If a facility determines that a conviction bars an applicant from employment in a facility, or is a contraindication to employment, the facility shall notify the applicant.

(4) A facility shall not employ an unlicensed applicant who has been convicted of an offense listed in Health and Safety Code, §250.006, if the facility determines that the conviction bars employment or is a contraindication to employment with the patients the facility serves.

(d) Before a facility employs any unlicensed applicant, the facility shall search the nurse aide registry (NAR) and the employee misconduct registry (EMR) by calling the toll-free number, 1-(800) 452-3934, or by using the Employability Status Search website at <http://www.dads.state.tx.us/providers/employability/esearch.cfm>.

(1) The facility shall receive the search results and verify that an unlicensed applicant is not designated in the NAR or the EMR as having a finding concerning abuse, neglect, or mistreatment of a patient, or misappropriation of a patient's property before employing the applicant.

(2) A facility shall not employ a nurse aide until the facility verifies that the applicant is listed in the NAR and verifies that the applicant is not designated in the NAR or the EMR as having a finding concerning abuse, neglect, or mistreatment of a patient of a facility, or misappropriation of a patient's property.

(e) In addition to the initial verification of employability, a facility shall comply with the following requirements for all unlicensed employees:

(1) conduct criminal history checks;

(2) if the employee is a nurse aide, search the NAR annually as set forth in subsection (c) of this section to determine whether the employee is listed in the NAR;

(3) search the NAR and the EMR annually as set forth in subsection (d) of this section to determine whether any employee is designated in the NAR or the EMR as having a finding concerning abuse, neglect, or mistreatment of a patient, or misappropriation of a patient's property;

(4) maintain in each unlicensed employee's personnel file a copy of the results of the search conducted under this subsection; and

(5) provide written information about the EMR to all unlicensed employees, including information that a person may not be employed if the person is listed in the EMR.

(f) A facility shall notify any employee if the facility determines that a conviction bars the employee from employment in a facility under Health and Safety Code, §250.006, or is a contraindication to employment.

(g) A facility shall immediately discharge any employee who is designated in the NAR and the EMR as having committed an act of abuse, neglect, or mistreatment of a patient of a facility, or misappropriation of a patient's property.

(h) A facility shall immediately discharge any employee whose criminal history check reveals conviction of a crime that bars employment under Health and Safety Code, §250.006, or that the facility determines is a contraindication to employment.

(i) In an emergency that requires immediate employment, a facility may hire an applicant on a temporary or interim basis before obtaining the results of a criminal conviction check.

(1) The facility shall justify and document the emergency.

(2) The facility shall verify that the applicant is not designated in the NAR or the EMR as having a finding concerning abuse, neglect, or mistreatment of a patient of a facility, or misappropriation of a patient's property.

(3) The facility shall verify that a nurse aid applicant is listed in the NAR.

(4) The facility shall request the DPS criminal conviction check within 72 hours of employment.

(5) The facility shall ensure that the applicant/employee has no direct contact with a patient until the facility obtains the person's criminal history record information and verifies the person's employability.

(j) The facility shall ensure that the criminal history records are used exclusively by the facility on behalf of the applicant or employee who is the subject of the records.

(1) All criminal records and reports and the information they contain are privileged information.

(2) The facility shall ensure that this information is not released or otherwise disclosed to any person or agency except on court order or with the written consent of the person being investigated.

(k) A person commits an offense if the person releases or otherwise discloses any information received under this chapter except as allowed in subsection (j) of this section. An offense under this section is a Class A misdemeanor.

(l) A facility or an officer or employee of a facility is not civilly liable for failure to comply with this chapter if the facility makes a good faith effort to comply.

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 November 1, 2010.

TRD-201006164

Lisa Hernandez
General Counsel

Department of State Health Services

Earliest possible date of adoption: December 12, 2010

For further information, please call: (512) 458-7111 x6972



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.33

The General Land Office (GLO) proposes an amendment to §15.33, concerning Certification Status of Nueces County Dune Protection and Beach Access Plan. The amendment to §15.33 adds a new subsection (k) to certify as consistent with state law the amendments to the Nueces County Beach Management Plan (Plan) that were adopted by the Nueces County Commissioners Court by order on July 14th, 2010.

The 1996 Plan may be viewed on the County's website at: <http://www.co.nueces.tx.us/pw/dunes/beachmanagement.asp>. Copies of the local government dune protection and beach access plan and any amendments to the Plan are available from Nueces County Department of Public Works, 901 Leopard St., Suite 103, Corpus Christi, Texas 78401-3697, phone number (361) 888-0490, and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, phone number (512) 463-5277.

BACKGROUND

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 - 15.21), a local government with jurisdiction over gulf beaches must submit its beach management plan and amendments to the plan to the GLO for certification, including requirements for the issuance of dune protection permits, termination of permits, authorized emergency response activities, and the requirement of compliance monitoring and certification of completion for dune restoration and mitigation. Nueces County Commissioners Court amended the County's Plan by order adopted on July 14th, 2010. The GLO is required to review such plan amendments and certify by rule that those amendments are consistent with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules. The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO. 31 TAC §15.3(o)(4).

Nueces County is a coastal county consisting of areas bordering Redfish Bay, Corpus Christi Bay, and the Laguna Madre. The County also borders the Gulf of Mexico to the southeast, extending from the southernmost boundary of Aransas County south to the northernmost boundary of Kleberg County. The County

includes barrier islands consisting of a portion of North Padre Island accessible from the east via the John F. Kennedy Causeway (Park Road 22) and Mustang Island, which is accessible from the east via ferry at Port Aransas.

The Gulf beaches and adjacent areas governed by the Plan are those unincorporated areas within the County and the Gulf beaches within the corporate limits of the City of Corpus Christi with respect to administration of the Dune Protection Act. The County has delegated authority to the City of Port Aransas for administration of the Dune Protection Act pursuant to Texas Natural Resources Code §63.011(a), but has not delegated such authority to the City of Corpus Christi. With respect to administration of the Open Beaches Act, the Gulf beaches within the corporate limits of the City of Corpus Christi are governed by the City of Corpus Christi Dune Protection and Beach Access Plan (City's Plan), previously certified as consistent with state law in 31 TAC §15.31. The Gulf beaches within the corporate limits of the City of Port Aransas are governed by the City of Port Aransas Dune Protection and Beach Access Plan, previously certified as consistent with state law in 31 TAC §15.24.

THE 2010 NUECES COUNTY PLAN AMENDMENTS

On July 14, 2010 the Commissioners Court of Nueces County adopted amendments to the 1996 Plan and submitted those amendments to the GLO with a request for certification. The 2010 plan amendments include, among other minor administrative changes, provisions for emergency response activities conducted under local government authority, changes to the definitions for small-scale and large-scale construction and dune restoration, requiring the submission of additional information needed to review dune permit applications, provisions for compliance monitoring and certification of authorized construction under a dune protection permit, additional provisions for termination of permits, and elimination of the prohibition of parking seaward of the concrete seawall on North Padre Island.

The County Commissioners Court approved changes to Section II (F)(5) of the Plan granting the local governmental authority to carry out emergency response activities within the dune protection area when failure to do so will cause unreasonable hazard to the public or public facilities and infrastructure. The provision states that reasonable efforts shall be made to avoid and minimize impacts to the dunes and dune vegetation, and reasonable mitigation efforts may be required. The local governmental authority declaring the emergency must notify the Nueces County Department of Public Works and the General Land Office within twenty-four (24) hours after the event requiring emergency activities. The authorization of emergency response does not impair the rights of the public to access and use the public beach easement or limit dune protection, but rather provides a public benefit to allow local authorities to make repairs without delay that may pose an immediate public health and safety risk or may cause substantial damage to dunes and dune vegetation. The GLO finds that the approved change to Section II (F)(5) of the Plan is consistent with state law.

The County Commissioners Court approved changes to Section II (H)(6)(a) of the Plan reflecting changes to 31 TAC §15.3 and state law relating to the definition of small-scale and large-scale construction. These changes include an amendment to allow the GLO thirty (30) working days to comment on large-scale construction applications. The GLO finds that the approved change to Section II (H)(6)(a) of the Plan is consistent with state law.

The County Commissioners Court approved changes to Section II (I)(14) of the Plan to require all new subdivision developments, except for ones authorized under an unexpired master-planned development, to include the following statement on the recorded plat: "A dune protection permit is required for any construction activity on each lot seaward of the Dune Protection Line (1000 feet from the mean high tide line)." The new requirement to include the statement on subdivision plats is not required by the Dune Protection Act or Beach/Dune Rules. However, the local government plans may include provisions that exceed the requirements of the Dune Protection Act or Beach/Dune Rules. Therefore, the GLO finds that the approved change to Section II (I)(14) of the Plan is consistent with state law.

The County Commissioners Court approved changes to Section III (D)(1-4) for Compliance Monitoring and Certification relating to Dune Protection Permit Actions by the Commissioners Court. The amendments include requirements that all conditions of the dune protection permit approved by the Commissioners Court shall be met, including additional provisions added by the Commissioners Court. In addition, permittees must notify the County of scheduled construction, and the permitted property may be accessed and inspected by the County during construction and until the expiration of the dune protection permit or issuance of an acceptance letter as authorized in Section III (D)(4). During construction, the County will notify the permittee in writing if any concerns arise and provide a corrective action plan to remedy the noncompliant actions. The changes also include provisions for the Commissioners Court or designate representative to assess a reasonable fee for inspection and monitoring of any permitting construction activities. The Commissioner's Court may also require a permittee to conduct or pay for a monitoring program to study the success of authorized dune mitigation or compensation efforts. Section 63.053 of the Dune Protection Act allows the commissioners court that has adopted a dune protection line to charge reasonable fees that do not exceed the cost for the provision of services necessary to implement its dune protection plan. Additionally, the Commissioner's Court approved provisions to require the permittee to submit an affidavit, signed and sealed by a registered profession engineer, architect, or geologist to the County Engineer within thirty (30) days of completion of large-scale projects and construction of habitable structures demonstrating that the provisions of the dune protection permit including dune mitigation and/or compensation are met and that the permitted work is completed. The County will verify that the provisions are met and the County Engineer will send a letter of acceptance or rejection of the mitigation or compensation efforts and provide a copy the GLO and the local municipality that issues beachfront construction certificates. The new requirements for compliance monitoring and certification imposes a stricter standard than required by the Open Beaches Act (OBA), Texas Natural Resources Code §§61.001 - 61.026; the Dune Protection Act (DPA), Texas Natural Resources Code §§63.001 - 63.181; and the Beach/Dune Rules, 31 TAC §§15.1 - 15.21. Local governments are permitted to adopt standards that meet or exceed the requirements of state law. Therefore, the GLO finds that the provisions of new subsection "D" are consistent with state law.

Accordingly, the GLO proposes to certify the 2010 Plan amendments approved by the Nueces County Commissioners Court on July 14, 2010, as consistent with state law, in accordance with the Beach/Dune Rules at 31 TAC §15.3(o)(4); §61.015(b) of the Open Beaches Act; and §63.054(c) of the Dune Protection Act.

FISCAL AND EMPLOYMENT IMPACTS

Mrs. Helen S. Young, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amendment is in effect there will be no fiscal implications for the state government as a result of enforcing or administering the amendment as proposed. However, there will be a fiscal impact on the local governments as a result of enforcing or administering the amendment as proposed. Nueces County will experience an increase in net revenue estimated at approximately \$9,000 for each year of the first five years the amendment is in effect as a result of collecting the compliance and monitoring fees. However, the increase in County revenues due to the fees will be offset by the corresponding increase in expenditures for compliance inspections and monitoring to ensure construction activities are consistent with the issued permit and that dune mitigation and/or compensation projects are completed.

Mrs. Helen Young has determined that the proposed requirement for the permittee to pay for county inspections and monitoring of any permitted activity as a condition of the issuance of a dune protection permit will increase the cost of compliance for individuals and small or large businesses that seek a dune protection permit. In addition, permittees will be required to submit an affidavit signed and sealed by an engineer, architect or geologist licensed in the State of Texas attesting that the provisions of the dune protection permit are met, which may increase the costs for compliance and planning for construction completion.

The GLO has determined a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

PUBLIC BENEFIT

Mrs. Helen Young has determined the public will benefit from the 2010 Plan amendment concerning additional requirements for the issuance of dune protection permits, because the new requirements will allow the county more oversight during the permitting process and reduce the possibility of non-compliant construction, thereby reducing expenditures for enforcement and remediation. In addition, Mrs. Young has determined that the public will benefit from the authorization of emergency response activities under the authority of the local government by reducing response times for events that may pose a public health and safety risk to beach users and public facilities or infrastructure. Mrs. Young has also determined that the requirement of compliance monitoring and certification of completion for dune restoration and mitigation will result in better protection for critical dunes and ensure that compensation efforts for unavoidable impacts to dunes are mitigated on a one-to-one basis and provide equal or better protection than the naturally occurring dunes in the area. Finally, the increase in oversight of dune permitting and construction authorized by the permits will provide better deterrence against violations of the conditions of the dune protection permits and the local Plan.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES

As required by the Government Code §2006.002(c) and (f), the GLO has determined that the proposed amendment to §15.33 may have an adverse economic effect on entities that meet the definition of a small or micro business under the Government Code §2006.001(1) or §2006.001(2). The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is

formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business. The GLO has identified three categories of small business entities described in the North American Industrial Classification System (NAICS) Table in the HB 3430 guidelines published by the Texas Comptroller of Public Accounts at <https://fmx.cpa.state.tx.us/fmx/legis/effect/> that may be affected by the proposed regulatory changes. The NAICS categories that include small businesses that may be affected by the proposal are as follows: NAICS No. 2361 "Residential Building Construction," NAICS No. 53 "Real Estate/Rental/Leasing," and NAICS No. 72 "Accommodation/Food Service." The number of small businesses as defined in HB 3430 identified by the Comptroller in the respective categories are as follows: Residential Building Construction - 6,206; Real Estate/Rental/Leasing - 17,128; and Accommodation/Food Service - 23,630. Approximately 1.3% of the state's population resides in Nueces County and would be subject to the proposal. The GLO estimated that a portion of the state's small business in the same proportionate share of the state's population in Nueces County would be affected by the proposal. Therefore it estimated that the number of small businesses in Nueces County affected by the proposal would be as follows: Residential Building Construction - 81; Real Estate/Rental/Leasing - 223; and Accommodation/Food Service - 308.

As described in the Fiscal Impact discussion above, the total cost of compliance with the new proposal for small businesses resulting from the new monitoring fees is estimated at \$9,000 annually. Individual fees will be determined by whether the construction is considered large scale or small scale. Those increased costs will be mitigated by the benefits of the certainty that the permittees will receive that compliance with all of the required mitigation requirements are met, for reduction in storm damage and erosion losses as a result of the mitigation of any damages to dunes, potential lower flood insurance rates for property owners.

As required by the Government Code §2006.002(c)(2), the GLO considered several regulatory alternatives to the proposal to minimize the impacts to small businesses consistent with health, safety, and environmental and economic welfare of the state. One alternative considered included not having a dune protection permit compliance monitoring and certification program by the County. This alternative was rejected because the proposal is necessary to ensure that permittees actually comply with the conditions contained in the dune protection permit. This alternative is not consistent with the statutory and regulatory goal of mitigating impacts to dunes. Another alternative would be to allow the County to implement a program to monitor and certify that requirements of a dune mitigation permit are met, but not include a permit fee related to such monitoring. This alternative was rejected because the permittee is in a better position than the County to assume the cost of the program as they are the party that is receiving the direct benefit from being allowed to develop an property despite the existence of critical dunes. Another alternative considered would be to exempt small businesses from the requirements of the proposal. This alternative was rejected because the exemption from the monitoring and compliance pro-

gram would not be in the interest of public health and safety as if the permittee ultimately failed to complete the dune mitigation requirements, the structure would likely be exposed to greater danger of damage from storm tides and potentially create hazards to adjacent inland property. The alternative included in the County's Plan that the GLO proposes to certify as consistent with state law does mitigate impacts to small businesses in that the County has represented that a different fee that is smaller will be charged for small scale construction projects as opposed to large scale construction projects.

CONSISTENCY WITH CMP

The proposal to amend §15.33 relating to Certification Status of Nueces County Dune Protection and Beach Access Plan is subject to the Coastal Management Program (CMP) as provided in Texas Natural Resources Code §33.2053(a)(10) and 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the CMP, and must be consistent with the applicable CMP goals and policies under §501.26, relating to Policies and Construction in the Beach/Dune System. The GLO has reviewed the proposed rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The proposed action is consistent with the GLO Beach/Dune Rules that the Council has determined to be consistent with the CMP. Consequently, the Land Office has determined that the proposed action is consistent with the applicable CMP goals and policies. The proposed amendment will be distributed to Council members in order to provide them an opportunity to provide comment on the consistency of the proposed rulemaking during the comment period.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed amendment to determine whether Texas Government Code, Chapter 2007, is applicable and a detailed takings impact assessment is not required. The GLO has determined the proposed amendment does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the GLO has determined the proposed amendment would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendment being proposed.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(e), which provide the GLO with the authority to adopt rules to preserve and enhance the public's right

to use and have access to and from the public beaches of Texas and to certify that plans. The amendment is proposed under the Texas Natural Resources Code §§61.011 and 61.015(b), and 61.022(e) which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose requirements for the issuance of dune protection permits, termination of permits, authorized emergency response activities, and the requirement of compliance monitoring and certification of completion for dune restoration and mitigation.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 475-1859 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(c), and 61.070, which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law. In addition, Texas Natural Resources Code §63.121 provides the GLO with authority to adopt rules for the protection of critical dune areas.

Texas Natural Resources Code §§61.011, 61.015, 61.022, and 63.121 are affected by the proposed amendment.

§15.33. Certification Status of Nueces County Dune Protection and Beach Access Plan.

(a) Nueces County has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The county's plan was adopted on March 25, 1992 and amended on October 23, 1996.

(b) The General Land Office certifies that the dune protection portion of the La Concha master plan adopted by the Nueces County Commissioners Court on March 20, 1996 is consistent with state law.

(c) The General Land Office certifies that the dune protection portion of the Palms at Waters Edge master plan adopted by the Nueces County Commissioners Court on December 27, 1996, is consistent with state law.

(d) The General Land Office certifies that the dune protection section of the Mustang Island Episcopal Conference Center master plan adopted by the Nueces County Commissioners Court on January 31, 2000 is consistent with state law.

(e) The General Land Office certifies as consistent with state law the amendment to Nueces County plan that was adopted by the Nueces County Commissioners Court on March 16, 2005, Order No. 20050032. The order amended that plan to increase the beach user fees imposed for parking on the beach in fee areas designated in the plan.

(f) The General Land Office certifies as consistent with state law the amendments to the Nueces County plan that were adopted by the Nueces County Commissioners Court on December 7, 2005.

(g) The General Land Office certifies as consistent with state law the following variances from §15.6(f)(3) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards)

in the County's plan as amended on December 7, 2005. The plan establishes special erosion and flood protection requirements for dune protection permits providing that a permittee shall:

(1) locate residential and commercial structures permitted after May 2000 at least 350 feet landward of the vegetation line unless no practicable development alternatives are possible; and

(2) restrict development permitted after May 2000 in the area between 350 feet and 200 feet landward of the vegetation line to recreational amenities such as pools and picnic areas. In any case, applicants must demonstrate that every attempt has been made to minimize use of impervious surfaces in this zone.

(h) Compliance with the special erosion and flood protection requirements for dune protection permits specified in subsection (g) of this section establishes a rebuttable presumption that the permittee has followed the mitigation sequence requirements in §15.4(f) of this title for avoidance and minimization of effects on dunes and dune vegetation. The variance certified in subsection (g) of this section does not exempt a permittee from compliance with compensatory mitigation requirements for unavoidable adverse effects on dunes and dune vegetation.

(i) The special erosion and flood protection requirements for dune protection permits specified in subsection (g) of this section shall not apply to a previously platted subdivision lot that was the subject of a prior dune protection permit, or that was part of a master planned development, the plans for which were previously approved and adopted by the Commissioners' Court, provided that the construction authorized by a new permit is consistent with the prior permit or master plan.

(j) The special erosion and flood protection requirements for dune protection permits specified in subsection (g) of this section shall not apply to areas within the jurisdiction of the City of Port Aransas.

(k) The General Land Office certifies as consistent with state law the amendments to the Nueces County plan that were adopted by the Nueces County Commissioners Court on July 14, 2010.

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 November 1, 2010.

TRD-201006203

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs
General Land Office

Earliest possible date of adoption: December 12, 2010

For further information, please call: (512) 475-1859



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

DIVISION 1. PROGRAM DESCRIPTION AND DEFINITIONS

40 TAC §700.807

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.807, concerning who is eligible to receive enhanced adoption assistance, in its chapter governing Child Protective Services. The purpose of the amendment is to improve the consistency of implementation of the Enhanced Adoption Assistance program statewide and to help ensure that Enhanced Adoption Assistance is provided only to the children for whom it was intended in legislation - children who would have been expected to remain in foster care through age 18 years unless enhanced adoption assistance benefits are made available. The proposed changes: (1) eliminate discretion to waive extensive adoption recruitment efforts; (2) clarify the types of recruitment efforts that must be attempted before a child is eligible for enhanced adoption assistance; and (3) clarify that prospective adoptive parents who indicate their willingness to adopt without enhanced adoption assistance will not be eligible for this benefit.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the Enhanced Adoption Assistance program will be used for the children for whom it was intended. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

Questions about the content of the proposal may be directed to Audrey Jackson at (512) 438-4136 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-431, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the Family Code, §162.302(g).

§700.807. Who is eligible to receive enhanced adoption assistance?
Enhanced adoption assistance is available to an adoptive or prospective adoptive parent who enters into an initial adoption assistance agreement on or after January 1, 2009, for a child with special needs as described in §700.804 of this title (relating to Who is a child with special needs?), who is in an approved adoptive placement, provided the child also meets each of the following criteria immediately prior to the signing of the adoptive placement agreement:

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

(4) The child has not been adopted despite our having made extensive and ongoing local and national adoption recruitment efforts. These efforts must include considering and following-up with families who initially appear able to meet the child's needs and express an interest in adopting the child, and either pursue or rule out adoption by these families; and [One of the following conditions exists:]

~~[(A) the child has not been adopted despite our having made extensive and ongoing local and national adoption recruitment efforts; or]~~

~~[(B) a DFPS program director or his or her designee reviews agency records, and determines that, without benefit of enhanced adoption assistance, the child will likely remain in paid foster care until at least the age of 18 years, based on factors including, but not limited to:]~~

~~[(i) the existence of a significant mental, emotional, physical or medical disability;]~~

~~[(ii) the child's age, especially adolescents; or]~~

~~[(iii) the number of prior foster care or adoptive placement disruptions the child has experienced.]~~

(5) The selected prospective adoptive parent is only willing to adopt the child if enhanced adoption assistance is available.

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 October 28, 2010.

TRD-201006113

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: December 12, 2010

For further information, please call: (512) 438-3437



SUBCHAPTER L. PERMANENCY PLANNING

40 TAC §§700.1201, 700.1202, 700.1204 - 700.1206

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.1201, 700.1202, 700.1204, 700.1205, and 700.1206, concerning permanency planning for foster children, in its chapter governing Child Protective Services. The purpose of the amendments is to include a requirement of an alternate permanency planning goal not only for children in DFPS's temporary managing conservatorship, but also permanent managing conservatorship, to reflect its continuing commitment to finding and achieving the most appropriate permanency goal for a child in care. In addition,

DFPS is clarifying the fact that DFPS may simultaneously be working on more than one permanency planning goal and to bring the subchapter up to date with current practice. Specifically, §700.1201 updates the agency name and adds language reflecting best practice. Section 700.1202 updates the agency name, adds the requirement for alternate permanency planning goals for children in the temporary and permanent managing conservatorship of DFPS, and clarifies that the documentation requirements are for all goals. Section 700.1204 updates the language to be consistent with the alternative permanency placement goals and deletes references to §700.1203 because that section was repealed effective June 1, 2010. Sections 700.1205 and 700.1206 update language to reflect current practices.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that DFPS rules will better facilitate permanency for children in care by including alternate permanency goals for a child that may be pursued concurrently with the child's primary permanency goal. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Carrie Ann Lopez at (512) 248-3589 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-432, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Texas Family Code, §263.3025 and §263.3026.

§700.1201. What is the permanency planning process?

The permanency planning process is a required, ongoing process that DFPS [PRS] follows when providing services to children and families. The process involves directing DFPS [PRS] services toward the achievement of:

- (1) - (4) (No change.)
- (5) a sense of security for the child; ~~and~~
- (6) a legal status for the child that protects the rights of the child; ~~and~~[-]
- (7) in the case of a child whose permanency goal is another planned, permanent living arrangement, a connection to a caring adult who will be supportive into adulthood during and after the transition to independent living.

§700.1202. What is a permanency plan?

There must be a permanency plan for all children receiving ~~in home~~ family-based safety services from DFPS [PRS] and for all children for whom DFPS [PRS] has responsibility for placement and care, which consists of:

(1) the primary permanency planning goal for the child and, in the case of a child for whom DFPS has been appointed temporary or permanent managing conservator, one or more alternate permanency planning goals;

(2) the specific steps to be taken to achieve the goal or goals, with responsibilities and time frames established for taking those steps; and

(3) a discussion of the efforts made to achieve the goal or goals.

§700.1204. How is a ~~the~~ permanency planning goal chosen?

(a) A ~~The~~ permanency planning goal ~~that is chosen~~ must serve the child's best interests and long term needs, including the need for an enduring and nurturing family relationship with safety, stability, and continuity of care.

(b) A permanency planning goal may be excluded after DFPS determines it is: ~~[The permanency planning goals, as described in §700.1203 of this title (relating to What are the permanency planning goals?); must generally be addressed as an ordered list of priorities. A lower listed goal is considered only after ruling out the higher listed goal(s) as:]~~

- (1) unnecessary to consider, by court order;
- (2) unreasonable or unachievable, after pursuing reasonable efforts; or
- (3) not appropriate to meet the child's needs and best interests.

§700.1205. How is the permanency plan established and reviewed?

(a) The permanency plan must initially be established in the development of the child's or family's service plan. The plan is reviewed at several different points in a case~~[-]~~ as part of DFPS's ~~[the]~~ regular review of the child's or family's service plan, ~~[the Permanency Planning Team reviews,]~~ and in the court hearings regarding permanency and placement review.

(b) (No change.)

§700.1206. Where is the permanency plan documented?

(a) For children receiving ~~in home~~ family-based safety services, the permanency plan is documented in the family's service plan.

(b) For children in the placement and care of DFPS [PRS], the permanency plan is documented in the child's and, as appropriate, the family's service plan.

(c) For children in the temporary managing conservatorship of DFPS [PRS], the permanency plan is also documented in the permanency progress report that is submitted to the court as required in the Texas Family Code, Chapter 263, Subchapter D.

(d) For children in the permanent managing conservatorship of DFPS [PRS], the permanency plan is also documented in the placement review report that is submitted to the court as required in the Texas Family Code, Chapter 263, Subchapter F.

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 October 28, 2010.

TRD-201006114

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: December 12, 2010

For further information, please call: (512) 438-3437



CHAPTER 730. LEGAL SERVICES SUBCHAPTER Q. CONTRACT APPEALS

40 TAC §§730.1601 - 730.1614

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

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of Subchapter Q, Contracting Appeals, consisting of §§730.1601 - 730.1614, in its Legal Services chapter. These rules are repealed since they are no longer valid. Texas Government Code, Chapter 2260 preempts these rules.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed repeals will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Brown also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that DFPS rules will be in compliance with the statutory provisions of Texas Government Code, Chapter 2260. There will be no effect on large, small, or micro-businesses because the proposed repeals do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Jared Davis at (512) 438-5647 in DFPS's Legal Services Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-428,

Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Texas Government Code, Chapter 2260.

§730.1601. *Definitions.*

§730.1602. *Right to a Hearing.*

§730.1603. *Special Requirements.*

§730.1604. *Notice of Adverse Action.*

§730.1605. *Request for a Hearing.*

§730.1606. *Effective Dates of Adverse Actions.*

§730.1607. *Administrative Law Judge.*

§730.1608. *Hearing Guidelines.*

§730.1609. *Withdrawal of Hearing Request and Informal Disposition.*

§730.1610. *Conduct of Hearings--General Requirements.*

§730.1611. *Prehearing Procedure.*

§730.1612. *Evidence and Depositions.*

§730.1613. *Deliberation.*

§730.1614. *Decisions.*

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 October 28, 2010.

TRD-201006115

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: December 12, 2010

For further information, please call: (512) 438-3437



CHAPTER 732. CONTRACTED SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§732.288, 732.401, 732.403, 732.407, 732.409, 732.411, 732.413, 732.415, 732.417, 732.421, 732.423, 732.427, 732.429, and 732.431, concerning the contract dispute resolution process, in its Contracted Services chapter. The purpose of the amendments is to: (1) correct

differences between DFPS rules and the Texas Government Code, Chapter 2260; and (2) clarify the contract dispute resolution process to more closely follow the Texas Attorney General model rules.

The amendment to §732.401 states that the Texas Government Code, Chapter 2260, takes priority in the event of any conflict between the DFPS rules and the statute.

The amendment to §732.407 makes minor modifications and to avoid potential confusion, expressly names the Commissioner as someone who may receive notice of a claim for breach of contract.

The amendment to §732.409 corrects a conflict between this rule and the Texas Government Code, Chapter 2260, regarding the amount of time that DFPS has to file notice of a counterclaim.

The amendment to §732.413 corrects a conflict between this rule and the Texas Government Code, Chapter 2260, regarding the amount of time that the parties have to begin negotiations.

The amendment to §732.423 clarifies the title of the head of the agency and alters the language to more closely follow the model rules of the Attorney General.

The amendment to §732.427 is amended to more closely follow the model rules of the Attorney General.

Also, minor clarifications are made to §§732.288, 732.403, 732.411, 732.415, 732.417, 732.421, 732.429, and 732.431. The clarifications correct a cross reference and change the word "shall" to "will" or "must," as appropriate.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be compliance with the statutory provisions of the Texas Government Code, Chapter 2260, and greater clarity of the rules. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Jared Davis at (512) 438-5647 in DFPS's Legal Services Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-428, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER L. CONTRACT ADMINISTRATION

40 TAC §732.288

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the Texas Government Code, Chapter 2260.

§732.288. *What is the audit appeals process?* [~~Audit Appeals Process.~~]

(a) To request an audit appeal, the contractor must file a written request for dispute resolution [~~a hearing~~] according to Subchapter N of this chapter (relating to Dispute Resolution [~~§730.1605 of this title (relating to Request for a Hearing)~~].

(b) (No change.)

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



SUBCHAPTER N. DISPUTE RESOLUTION

40 TAC §§732.401, 732.403, 732.407, 732.409, 732.411, 732.413, 732.415, 732.417, 732.421, 732.423, 732.427, 732.429, 732.431

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the Texas Government Code, Chapter 2260.

§732.401. *What are the purpose and scope of this subchapter?*

This subchapter governs the negotiation and mediation of a claim of breach of contract asserted by a contractor against the Department, as well as a counterclaim asserted by the Department against the contractor, pursuant to the requirements established under ~~the Government~~

~~Code,] Chapter 2260 of the Texas Government Code. Chapter 2260 takes precedence to the extent of any conflict or inconsistency between these rules and the applicable requirements of Chapter 2260.~~

§732.403. What are the prerequisites to suit against the Department for contract breach?

~~Subject to §2260.007 of the Texas Government Code, the [The] procedures contained within [this subchapter are exclusive and required prerequisites to suit under the Government Code,] Chapter 2260 of the Texas Government Code are exclusive and required prerequisites to suit in accordance with Chapter 107 of the Texas Civil Practice and Remedies Code.~~

§732.407. What are the requirements for notice of claim of breach of contract?

(a) A contractor asserting a claim of breach of contract under Chapter 2260 of the Texas Government Code ~~must [Chapter 2260, shall] file notice of the claim as provided in this section.~~

(b) The notice of the claim ~~must [shall] be:~~

(1) (No change.)

(2) delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the:

(A) contract signatory for the Department [~~director] of the region or state office division which signed the contract; or~~

(B) Commissioner of the Department [~~Executive Director].~~

(c) The notice ~~must [shall] state in detail:~~

(1) (No change.)

(2) a description of damages that are recoverable under §2260.003 of the Texas Government Code that the contractor asserts resulted from the alleged breach, including the amount and method used to calculate those damages; and

(3) (No change.)

(d) The notice of claim ~~must [shall] be delivered no later than the 180th [180] calendar day [days] after the date of the event that the contractor asserts as the basis of the claim.~~

§732.409. May the Department counterclaim?

(a) The Department may assert a counterclaim under Chapter 2260 of the Government Code, [~~Chapter 2260,] as provided in this section. The counterclaim ~~must [will] be:~~~~

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

(b) The notice ~~must [shall] state in detail:~~

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

(c) The notice of counterclaim ~~must [shall] be delivered to the contractor no later than the 60th [90] calendar day [days] after the Department's receipt of the contractor's notice of claim.~~

(d) Nothing ~~in this subchapter [herein] precludes the Department from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.~~

§732.411. Is there a duty to negotiate?

The parties ~~must [shall] negotiate in accordance with the timetable set forth in §732.413 of this title (relating to What is the negotiation timetable?) in an [to] attempt to resolve all claims and counterclaims. No party is obligated to settle with the other party as a result of the negotiation.~~

§732.413. What is the negotiation timetable?

(a) Following receipt of a contractor's notice of claim, the Commissioner of the Department or the Commissioner's [~~Executive Director or] designee will [shall] review the contractor's claim and the Department's counterclaim, if any, and initiate negotiations with the contractor ~~in an [to] attempt to resolve the claim and counterclaim.~~~~

(b) The parties will ~~begin negotiations within a reasonable period of time, not to exceed 120 calendar days following the date the Department receives the contractor's notice of claim. [Subject to subsection (c) of this section, the parties shall begin negotiations within a reasonable period of time, not to exceed 60 calendar days following the later of the:]~~

~~[(1) date of termination of the contract;]~~

~~[(2) completion date in the original contract; or]~~

~~[(3) date the Department receives the contractor's notice of claim.]~~

~~[(c) The Department may delay negotiations until after the 180th day from the date of the event giving rise to the claim of breach of contract by delivering written notice to the contractor that the commencement of negotiations will be delayed and notice of when the Department will be ready to begin negotiations.]~~

~~[(c) [(d)] The parties may conduct negotiations according to an agreed schedule as long as they complete the negotiations no later than the 270th calendar day [270 days] after the Department receives the contractor's notice of claim, subject to one or more extensions agreed upon by the parties.~~

~~[(d) [(e)] The parties may agree in writing on or before the 270th calendar day after the Department receives the contractor's notice of claim to extend the time for negotiations. The agreement ~~must [shall] be signed by representatives of the parties with authority to bind each respective party and must [shall] provide for the extension of the statutory negotiation period until a specified date [ertain]. The parties may enter into a series of written extension agreements that comply with the requirements of this section.~~~~

~~[(e) [(f)] The contractor may request a contested case hearing before the State Office of Administrative Hearings on or before the 270th calendar day after the Department receives the contractor's notice of claim, or the expiration of any extension agreed to by the parties.~~

~~[(f) [(g)] The parties may agree to mediate the dispute at any time before the 270th calendar day after the Department receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties [pursuant to subsection (e) of this section].~~

§732.415. How are negotiations conducted?

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

(c) Material submitted pursuant to this section and claimed to be confidential by the contractor ~~will [shall] be handled pursuant to the requirements of the Public Information Act, Government Code, Chapter 552.~~

§732.417. What are the settlement approval procedures?

The parties' settlement approval procedures ~~must [shall] be disclosed prior to, or at the beginning of, negotiations. To the extent possible, the parties ~~must [shall] select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.~~~~

§732.421. Who bears the costs of negotiations?

Unless the parties agree otherwise, each party ~~will [shall] be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney's fees, consultant's fees, and expert's fees.~~

§732.423. *May a contractor request a contested case hearing?*

(a) If a claim for breach of contract is not resolved in its entirety on or before the 270th day after the Department receives the notice of claim, or after the expiration of any extension, the contractor may file a request with the Department for a contested case hearing before the State Office of Administrative Hearings (SOAH) in accordance with Chapter 2001 of the Texas Government Code.

(b) A request for a contested case hearing must [shall] state the legal and factual basis for the claim and must [shall] be delivered within 30 days after the 270th day, or the expiration of any agreed extensions, to the Commissioner of the Department [Executive Director or designee,] or the person designated in the contract to receive notice [~~within 30 days after the 270th day or the expiration of any agreed extensions, as described in §732.413 of this title (relating to What is the negotiation timetable?)~~].

(c) The Department must [shall] forward the contractor's request for a contested case hearing to SOAH within 30 days after receipt of the request.

(d) If the parties reach an impasse in the negotiations and proceeding to a contested case hearing would serve the interests of justice, the parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by the Department to the extent that the claim or counterclaim, if any, remain unsolved. [The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by the Department if they have achieved a partial resolution of the claim and counterclaim, if any, or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.]

§732.427. *How should mediations be conducted?*

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

(c) To facilitate a meaningful opportunity for settlement, the parties will [shall], to the extent possible, select representatives [~~to participate in the mediation]~~ who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

(d) Both parties may agree to mediate a claim before the 120th day after the date the Department receives the notice of contractor's claim.

§732.429. *Who bears the costs of mediation?*

Unless the parties agree otherwise, the [The] costs of the mediator must [shall] be divided equally between the parties. Each [Unless the contractor and the Department agree otherwise, each] party must [shall] be responsible for its own costs incurred in connection with the mediation, including costs for [of document] reproduction of [for] documents requested by such party, attorney's fees, consultant's fees, and expert's fees.

§732.431. *What are the requirements regarding a settlement agreement as a result of mediation?*

(a) A settlement agreement reached during, or as a result of mediation, that resolves an entire claim or any designated and severable portion of a claim must [shall] be in writing and signed by representatives of the contractor and the Department who have authority to bind each respective party.

(b) If the settlement agreement does not resolve all issues raised by the claim or [and] counterclaim, if any, the agreement must [shall] identify the issues that are not resolved.

(c) (No change.)

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

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TRD-201006117

Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



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 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 15. NATIONAL RESEARCH UNIVERSITIES

SUBCHAPTER C. NATIONAL RESEARCH UNIVERSITY FUND

19 TAC §§15.40 - 15.44

The Texas Higher Education Coordinating Board withdraws the proposed new §§15.40 - 15.44 which appeared in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4550).

Filed with the Office of the Secretary of State on October 29, 2010.

TRD-201006152

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: October 29, 2010

For further information, please call: (512) 427-6114



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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 29. ECONOMIC DEVELOPMENT SUBCHAPTER D. TEXAS RURAL INVESTMENT FUND PROGRAM

4 TAC §§29.60 - 29.66

The Texas Department of Agriculture (department) adopts new Chapter 29, Subchapter D, §§29.60 - 29.66, concerning the Texas Rural Investment Fund Program, without change to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8217).

The new sections are adopted to establish the Texas Rural Investment Fund Program (program), which, when funded, will provide grants or loans in order to stimulate economic development in rural areas of Texas, including local entrepreneurship, job creation or retention, new capital investment, strategic economic development planning, individual economic and community development leadership training, housing development, or innovative workforce education. New §29.60 and §29.61 provide a statement of authority and purpose for the sections. New §29.62 provides definitions to be used in new Subchapter D. New §29.63 lists the types of activities for which financial assistance will be available. New §29.64 provides for administration of the program by the department. New §29.65 provides what the department will consider in evaluating projects. New §29.66 provides that the department will issue one or more Request for Proposals on the program.

No comments were received on the proposal.

Chapter 29, Subchapter D, §§29.60 - 29.66 is adopted under the Texas Agriculture Code, §12.046(g), which provides that the department shall adopt rules to administer the Texas Rural Investment Fund Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 25, 2010.

TRD-201006082

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: November 14, 2010

Proposal publication date: September 10, 2010

For further information, please call: (512) 463-4075



SUBCHAPTER E. RURAL ECONOMIC DEVELOPMENT AND INVESTMENT PROGRAM

4 TAC §§29.70 - 29.77

The Texas Department of Agriculture (department) adopts new Chapter 29, Subchapter E, §§29.70 - 29.77, concerning the Rural Economic Development and Investment Program, without change to the proposal published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8219).

The new sections are adopted to establish the Rural Economic Development and Investment Program (program) as a financial assistance program to encourage private development in rural areas of Texas. The financial assistance provided under this program may be used for: the acquisition or development of land, easements, or rights-of-way; attracting new private enterprises to rural counties and municipalities; the construction, extension, or other improvement of water or waste disposal facilities or transportation infrastructure; or any other activity relating to private economic development that will encourage economic and infrastructure development in a rural area. Methods of financial assistance include loans, credit enhancements, assistance to lower interest rates, purchase or lease financing, or other methods of leveraging money from sources other than Texas, to eligible entities for eligible projects.

New §29.70 and §29.71 provide a statement of authority and purpose for the sections. New §29.72 provides definitions to be used in new Subchapter E. New §29.73 provides requirements to be an eligible entity. New §29.74 lists the types of activities for which financial assistance will be available. New §29.75 provides methods of financial assistance. New §29.76 requires the segregation of funds received under the program. New §29.77 provides that the department will issue one or more Request for Proposals on the program.

No comments were received on the proposal.

Chapter 29, Subchapter E, §§29.70 - 29.77 is adopted under the Texas Agriculture Code, §12.0271(e), which provides that the department shall adopt rules to implement the Rural Economic Development and Investment Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 25, 2010.

TRD-201006081

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 26. PRACTICE AND PROCEDURE

13 TAC §26.24

The Texas Historical Commission (Commission) adopts an amendment to §26.24, concerning Reports Relating to Archeological Permits, without changes to the proposed text as published in the August 20, 2010, issue of the *Texas Register* (35 TexReg 7170).

The adoption of these amendments is needed due to requirements in the rules of the Texas State Library and Archives Commission (TSLAC). TSLAC rules require that a copy of certain reports filed with state agencies must also be filed with the TSLAC. The amendment requires that the permittee, sponsor, or principal investigator provide one copy of the final report to the TSLAC.

Only one comment was received regarding adoption of the amendment, and the commenter stated that he believed the Commission should distribute the report copy to the Texas State Library and Archives Commission rather than the project archeologists. The Commission does not agree due to the fact that most archeologists are already sending copies of their reports to many libraries including TSLAC, therefore the requirement to specifically send one to TSLAC will not adversely affect the majority of archeologists performing investigations under permit from the Commission.

The amendment is adopted under the Texas Natural Resources Code, Title 9, Chapter 191 §191.058, which provides the Texas Historical Commission with authority to promulgate rules and require contract or permit conditions to reasonably affect the purposes of Chapter 191.

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 October 27, 2010.

TRD-201006107

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: November 16, 2010

Proposal publication date: August 20, 2010

For further information, please call: (512) 463-1858



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.8

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of §33.8, concerning On-Premises Application Notification, without change to the proposal published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8225).

Section 33.8 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist. However, the commission believes the policy expressed in the rule should be updated, and chooses to address these issues in proposed new §33.13, Process to Apply for License or Permit. Therefore, the commission has determined that §33.8 should be repealed. The matters formerly addressed separately in §33.8 will now be addressed as part of a more general rule addressing several matters relating to the application process.

No comments were received regarding the proposed repeal.

The repeal is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code; and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

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 October 29, 2010.

TRD-201006149

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: November 18, 2010

Proposal publication date: September 10, 2010

For further information, please call: (512) 206-3443



16 TAC §33.13

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of §33.13, concerning Application for Beer License, without change to the proposal published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8225).

Current §33.13 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist. However, the commission has determined that the current rule needs significant changes, that it should therefore be repealed, and that a new rule should be adopted to replace the repealed rule. The procedures applicants must follow for beer licenses will now be addressed as part of a broader rule applying to all applications for permits and licenses.

No comments were received regarding the proposed repeal.

The repeal is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code; and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201006147

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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Proposal publication date: September 10, 2010

For further information, please call: (512) 206-3443



16 TAC §33.13

The Texas Alcoholic Beverage Commission (Commission) adopts new §33.13, concerning Process to Apply for License or Permit. The section is adopted without changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8226) and will not be republished.

New §33.13 is adopted to clarify application procedures and to conform those procedures to the Texas Alcoholic Beverage Code.

New §33.13 establishes the procedures an applicant must follow to apply for a license or permit from the commission. The section requires completion of a pre-qualification packet before an application for an on-premises location may be filed and sets forth the requirements for a complete pre-qualification packet. The section also clarifies requirements for the posting of notice signs relating to applications for on-premises locations.

The Commission received no comments about the proposed rule.

The new section is adopted under the authority of Texas Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code; and Gov-

ernment Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Alan Steen

Administrator

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CHAPTER 45. MARKETING PRACTICES SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.105

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of current §45.105, Outdoor Advertising by Mixed Beverage Establishments, without change to the proposal published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8227).

Current §45.105 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist. However, the commission has determined that the current rule should be amended for clarification and to consolidate the commission's policies regarding other forms of advertising, that it should therefore be repealed, and that a new rule should be adopted to replace the repealed rule.

No comments were received regarding the proposed repeal.

The repeal is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code; and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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16 TAC §45.105

The Texas Alcoholic Beverage Commission (commission) adopts new §45.105, Advertising. The section is adopted without changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8228) and will not be republished.

New §45.105 clarifies and consolidates the commission's policies regarding price display at mixed beverage establishments, advertising by private clubs, obligations of retailers using internet advertising, mobile advertising on vehicles, and advertising in and on public vehicle conveyances for hire.

The commission received no comments about the proposed rule.

The new section is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code; Alcoholic Beverage Code §108.07, which requires the commission to promulgate reasonable rules relating to advertising of mixed beverage establishments; and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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16 TAC §45.107

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of current §45.107, Advertising of Alcoholic Beverages by Private Clubs, without change to the proposal published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8228).

Section 45.107 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist. However, the commission believes that another issue related to advertising of alcoholic beverages by private clubs should be addressed, and believes it is appropriate to consolidate these issues in new §45.105, relating to Advertising. Therefore, the commission has determined that current §45.107 should be repealed.

No comments were received regarding the proposed repeal.

The repeal is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code; and Government Code

§2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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16 TAC §45.107

The Texas Alcoholic Beverage Commission (commission) adopts new §45.107, Alcoholic Beverages Utilized for Cooking Purposes at On-Premises Locations. The section is adopted without changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8229) and will not be republished.

Alcoholic Beverage Code §25.09 and §28.06 authorize the commission to allow certain on-premises permittees to possess and use certain alcoholic beverages for cooking purposes that they are not allowed to sell. New §45.107 implements these provisions of the Alcoholic Beverage Code by setting forth safeguards to assure that products for sale and products for cooking only are separately maintained.

The commission received no comments about the proposed rule.

The new section is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code; and Alcoholic Beverage Code §25.09 and §28.06, which authorize the commission to adopt rules on the use of certain alcoholic beverages for cooking purposes only.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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16 TAC §45.108

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of §45.108, concerning Restrictions to the Use of Brand Names and Insignia by Industry, without change

to the proposal published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8230).

Section 45.108 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist. However, the commission believes that issues regarding the use of brand names and insignia currently addressed in §45.108 should be consolidated with similar issues in §45.112, which is being amended in a separate but simultaneous proceeding. Therefore, the commission has determined that §45.108 should be repealed.

No comments were received regarding the proposed repeal.

The repeal is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code; Alcoholic Beverage Code §108.03, which authorizes the commission to adopt rules relating to alcoholic beverage advertising; and Government Code §2001.039 which requires an agency to periodically review its rules to determine if the need for them continues to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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16 TAC §45.112

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §45.112, Use of Brand Names and Insignia Restricted. The amendment is adopted with changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8231).

Section 45.112 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist. In a separate but simultaneous proceeding, §45.108, Restrictions to the Use of Brand Names and Insignia by Industry, was similarly reviewed under Government Code §2001.039. The commission in that proceeding has determined that the reasons for adopting §45.108 continue to exist, but that it should be repealed and the matters formerly addressed in §45.108 should now be addressed in §45.112. The rule is necessary because the provisions of the Alcoholic Beverage Code restricting the use of brand names are still applicable and the rule implements those provisions.

The amendment to §45.112 is adopted to centralize and clarify policies restricting the use of alcoholic beverage brands on caps or uniforms worn by: employees of manufacturers, distributors or

wineries; and participants in sporting events who are sponsored by manufacturers, distributors, distillers or wineries. The amendment also addresses the use of alcoholic beverage brands in connection with: business cards and stationery; manufacturer, local distributor and wholesaler vehicles; and menus provided to a retailer by a member of the manufacturing or wholesale tiers.

The staff of the commission conducted a public hearing on September 26, 2010 at which two comments were received regarding the proposed amendment.

The Beer Alliance of Texas, represented by Rick Donley, recommended removing proposed subsection (f) (which restricted retail employees from buying branded caps or uniforms from an upper tier member). Mr. Donley stated that the commission was overreaching its authority in the proposed subsection, that it did not help in maintaining an orderly market (which is the purpose of regulation in this area), and that it was unenforceable.

The Texas Package Store Association, represented by Fred Marosko, also suggested that proposed subsection (f) was unenforceable and that the commission had higher priority concerns.

The commission agrees with the commenters and therefore in the section as adopted deletes proposed subsection (f) and reletters proposed subsection (g) appropriately. However, the commission notes that Alcoholic Beverage Code §102.07 and §102.15 restrict upper tier members from providing anything of value to a retailer.

No comments were received regarding the other proposed subsections, and the remaining subsections are adopted as proposed and relettered appropriately.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code; Alcoholic Beverage Code §108.03, which authorizes the commission to adopt rules relating to alcoholic beverage advertising; and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

§45.112. Use of Brand Names and Insignia by Industry.

(a) This section is promulgated pursuant to Alcoholic Beverage Code, §102.07 and §108.03.

(b) Advertising of an alcoholic beverage on caps, regalia or uniforms worn by an employee of a manufacturer, distributor, distiller or winery, shall be limited to:

(1) the name and address of the manufacturer, distributor, distiller or winery; and

(2) the brand names, logos and slogans that appear on the container labels approved by the administrator for such alcoholic beverage.

(c) Advertising of an alcoholic beverage on caps, regalia or uniforms worn by a participant in any game, sport, athletic contest or revue, when the participant is sponsored by a manufacturer, distributor, distiller or winery, shall be limited to:

(1) the name and address of the manufacturer, distributor, distiller or winery; and

(2) the brand names, logos and slogans that appear on the container labels approved by the administrator for such alcoholic beverage.

(d) Business cards and stationery bearing brand insignia may be used by licensees and permittees who are not retail licensees and permittees. Such business cards and stationery may contain:

- (1) the name and address of the user;
- (2) the name and address of the firm represented;
- (3) the brand insignia of any alcoholic beverage which the firm represents or the user is licensed to sell; and
- (4) any other logo, slogan or trademark that appears on the approved label for such alcoholic beverage, or which slogan or trademark has otherwise been approved by the administrator.

(e) Advertising of alcoholic beverages on the equipment, service or delivery vehicles of a member of the manufacturing or wholesale tiers shall be limited to the brand names or logos of the alcoholic beverages sold or represented by the manufacturer, local distributor or wholesaler, firm names and addresses of the manufacturer, local distributor or wholesaler, and such slogans as have been approved by the administrator.

(f) Menu cards, folders or sheets advertising beer, ale or malt liquor may be furnished to a holder of a retail license or permit by an upper-tier member, if such menu cards, folders or sheets, at the time of their delivery to the retailer, do not list any food or drink item offered for sale by the retailer. The holder of the retail license or permit shall bear all costs of listing any such food or drink item on the menu cards, folders or sheets.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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16 TAC §45.120

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §45.120, Co-packaging of Liquor. The amendment is adopted with changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8232).

Section 45.120 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist, but that the rule should be amended. The rule is necessary to implement Alcoholic Beverage Code §102.07(a)(5).

The amendment to §45.120 defines co-packs, requires pricing to demonstrate that the retailer receives no unlawful value or benefit from the co-pack, and provides that co-packs may not be used as bargaining chips to induce retailers to buy other products.

The staff of the commission conducted a public hearing on September 26, 2010 at which two comments were received regarding the proposed amendment.

Fred Marosko, representing the Texas Package Store Association, noted that after the holiday season package stores may break a co-pack and give away for free the item that was co-packaged with the alcoholic beverage. He asked that this practice be acknowledged in the rule.

The commission did not intend to change the current practice described by Mr. Marosko, but understands that the language in proposed subsection (c) could be read that way. In proposed subsection (c), the commission proposed to reletter old subsection (b) and modify the text thereof. In response to Mr. Marosko's comment, the commission declines to modify the text of old subsection (b), but instead simply reletters it as new subsection (c). The effect of this is to retain the status quo in this area. The proposed textual changes to proposed subsection (c) are withdrawn.

Alan Gray, representing Licensed Beverage Distributors, supported the amendment as proposed. He noted that co-packs are offered throughout the year and not just at the holidays.

The commission acknowledges Mr. Gray's information, but makes the previously discussed change to proposed subsection (c) to effectuate the commission's intent, which was to maintain the status quo in this area.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code; and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

§45.120. *Co-packaging of Liquor.*

(a) This section relates to Alcoholic Beverage Code §102.07(a)(5).

(b) As used in this section:

(1) "Co-pack" means a package:

(A) originally bundled and supplied by a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery or wine bottler (or an agent, employee or servant of such);

(B) containing an alcoholic beverage and another item;

(C) where the package is designed to be delivered intact to the ultimate consumer; and

(D) where the additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.

(2) "Naked bottle" means an alcoholic beverage sold by a wholesaler that is similar in all regards to the alcoholic beverage contained in a co-pack sold by that wholesaler, except that it is not packaged with any other item.

(c) If any alcoholic beverage is sold by a wholesaler as a "co-pack", no retailer may separate the other packaged item and sell it by any other means other than the way it was originally packaged when received.

(d) In order to demonstrate that a non-alcoholic beverage item in a co-pack has no unlawful value or benefit to the retailer, a retailer must price and sell a co-pack at a cost/price differential not to exceed the cost/price differential at which the retailer prices and sells a naked bottle received from the same wholesaler.

(e) Nothing in this section shall preclude a supplier from differentiating in the price of a naked bottle and co-pack during the packaging phase of a co-pack by adding cost to the co-pack and increasing the baseline price of the co-pack offered to wholesalers.

(f) A retailer may not be forced, induced or persuaded to purchase a prescribed number of co-packs in order to purchase naked bottles, nor may a retailer be forced, induced or persuaded to purchase a prescribed number of naked bottles in order to purchase co-packs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. REGULATION OF CREDIT TRANSACTIONS

DIVISION 1. DELINQUENT LIST

16 TAC §45.121

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §45.121, Credit Restrictions and Delinquent List for Liquor. The amendment is adopted with changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8233).

The amendment to §45.121 is adopted to fulfill part of the commission's commitment to gradually reduce the number of days between a retailer becoming delinquent on a bill to a wholesaler and the retailer's name appearing on the delinquent list. This commitment was made in recognition both of the efficiencies of the commission's new procedures for the delinquent list and of the need to allow retailers an opportunity to adjust to those efficiencies.

The amendment to §45.121 shortens the time allowed from the end of the reporting period for credit delinquencies to the date of publication of the delinquent list. The effect of the amendment is to give delinquent retailers two fewer days to pay a delinquent bill before their names appear on the delinquent list. When a retailer's name appears on the delinquent list, all wholesalers are on notice that they may not sell any liquor to that retailer until the delinquent account is paid in full, pursuant to Alcoholic Beverage Code §102.32(d).

The commission received two comments about the proposed section and makes a change in response to one of the comments.

Licensed Beverage Distributors, represented by Alan Gray, believes the proposed section states the appropriate policy and supports it as published.

The Texas Wine and Grape Growers Association ("TWGGA") objected to the inclusion of proposed §45.121(b)(6), which

defined wineries as retailers as to any alcoholic beverages purchased from a seller for purposes of resale to an ultimate consumer. The effect of the language was to subject wineries in those limited circumstances to the requirements of Alcoholic Beverage Code (Code) §102.32 and the other provisions of §45.121 applicable to retailers. They already are subject to the requirements applicable to wholesalers.

TWGGA asserts that the proposed amendment is contrary to the express language of Code §102.32(a)(1), which lists "winery" under the definition of "wholesale dealer". The proposed amendment presumed that a winery, when functioning as a retailer, belongs in the category of "any other retailer" and is thus appropriately categorized as a "retailer" under the express language of Code §102.32(a)(2).

Contrary to the principles of the three-tier system, which underlies the system of alcoholic beverage regulation in Texas and is the public policy of this state as declared by the Texas Legislature in Code §6.03(i), Chapter 16 of the Code allows the holder of a winery permit to engage in activities in all three tiers (see: §16.01(a)(1), allowing manufacturing; §16.01(a)(4), allowing wholesaling; and §16.01(a)(5), allowing retailing).

TWGGA suggests that the Code consistently classifies wineries as members of the upper tiers and cites §§102.03, 102.04 and 102.07 in support of that proposition. However, in those instances, the Legislature is at pains to prevent a winery functioning as a manufacturer or wholesaler from controlling, as a manufacturer or wholesaler, other non-affiliated retailers. A winery is, of course, allowed to control its own retail operations. The fact that the legislature classified wineries as members of the upper tiers for the purpose of restraining their behavior as members of the upper tiers is not instructive as to how the legislature meant to treat their retail behavior in connection with credit arrangements between buyers and sellers of alcohol.

TWGGA acknowledges that the Code does not elsewhere define "retailer", but seeks to divide retailers from wholesalers by focusing on their ability to resell a product. It notes that every entity defined as a "wholesaler" in Code §102.32(a)(1) is authorized to sell its products to others who may resell it, and cites in support thereof Code §§16.01(a)(4), 19.01(3), 20.01(3) and 23.01(a)(2). There is no argument that a wholesaler sells for resale and that wineries are allowed by Code §16.01(a)(4) to sell for resale.

However, TWGGA states that "the defining characteristic of a retailer within the structure of the code" is that it is only authorized to sell its product "not for resale", and cites Code §§22.01(2), 24.01(a)(2), 25.01(1), 26.01(a), 27.01, 27.11, 28.01(a), 32.01(a), 69.01 and 71.01. While these code provisions effectively, if not always explicitly, prohibit resale, the commission disagrees that this is the "defining characteristic" for classifying one as a retailer. Instead, the commission relies on Code §102.01 for guidance. Code §102.01 imposes tied house restrictions to implement the State's three-tier policy. Since that policy is foundational as to alcoholic beverage regulation in Texas, the commission believes Code §102.01 is a more reliable guidepost for understanding the structure of the code. Code §102.01(a) provides that the terms "wholesaler", "retailer" and "manufacturer" are to be considered as they are "ordinarily used and understood, regardless of the specific names given permits" elsewhere in the code. And "retailer" is ordinarily used and understood according to its dictionary definition: "the sale of goods or commodities in small quantities directly to consumers".

Thus, the inability to resell is not the defining characteristic of "retailers" in the Code (although they may have that characteristic in common). Instead, the ability to sell "directly to consumers" is the defining characteristic. And that is a characteristic that wineries share with other retailers. Code §16.01(a)(5). Classifying wineries as "other retailers" for purposes of §45.121(b)(6) is not, therefore, per se beyond the commission's authority.

Nonetheless, the commission is persuaded by TWGGA's arguments that the practical difficulties associated with the legal operation of a winery business under Code §16.01(a) do deprive it of the ability to apply the credit requirements of the code and rules to wineries operating as retailers. Under Code §16.01(a)(4), wineries can purchase alcohol from other wholesalers, which is what retailers do. Under Code §16.01(a)(5), a winery can sell to ultimate consumers, which is what retailers do. But TWGGA points out that a winery can do other things with the product they buy from wholesalers other than sell it to consumers. The winery could resell the product to other wholesalers, inside or outside of the state (Code §16.01(a)(4)). The winery could also use it to blend with other wines (Code §16.01(a)(7)). As TWGGA discusses, the winery may not know to what use it will put the purchased product at the time it purchases it. Since the commission cannot impose an obligation on the winery at the time of purchase to specify how it will use the product, the commission cannot impose the credit obligations on the winery as retailer without imposing them on the winery as wholesaler or manufacturer and the commission is without power to do that.

For the reasons discussed, the commission agrees with TWGGA that the proposed amendment to §45.121(b)(6) should be withdrawn, and that change is made in the section as adopted.

No other comment was received regarding the other amendments proposed in §45.121(d) - (h) and (j), and the amendments to those subsections are adopted as proposed.

Based on the proposed amendment, TWGGA challenged the commission's conclusion that there would be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission as a result of adopting the proposed amendment. The commission notes its decision to withdraw the portion of the proposed amendment defining wineries as "other retailers", which would have imposed additional obligations on them. The commission concludes that there will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission as a result of adopting the section as amended.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants the commission the authority to prescribe rules necessary to carry out the provisions of the Code; Alcoholic Beverage Code §102.32(f), which authorizes the commission to adopt rules to give effect to that section of the Code; and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

§45.121. Credit Restrictions and Delinquent List for Liquor.

(a) Purpose. This rule implements §§102.32, 11.61(b)(2), and 11.66 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions.

(1) Alcoholic beverage--As used in this section includes only liquor, as that term is defined in §1.04 of the Code.

(2) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment,

including, money order, cashier's check, certified check or completed electronic funds transfer.

(3) Delinquent payment--A financial transaction or instrument that fails to provide payment in full or is returned to the Seller as unpaid for any reason, on or before the day it is required to be paid by §102.32(c) of the Code.

(4) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in a Retailer making one or more delinquent payments to one or more Sellers.

(5) Incident--A single delinquent payment.

(6) Retailer--A package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer, and their agents, servants and employees.

(7) Seller--A wholesaler, class B wholesaler, winery, wine bottler, or local distributor and their agents, servants and employees.

(c) Invoices. A delivery of alcoholic beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the alcoholic beverages, the price and terms of sale, and the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.

(2) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.

(3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise.

(d) Delinquent Payment Violation. A Retailer who makes a delinquent payment to a Seller for the delivery of alcoholic beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay a delinquent amount, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.

(2) A Retailer whose permit or license expires or is cancelled for cause, voluntarily cancelled, suspended or placed in suspension while on the delinquent list will be disqualified from applying for or being issued an original or renewal permit or license until all delinquent payments are satisfied. For purposes of this section, the Retailer includes all persons who were owners, officers, directors and shareholders of the Retailer at the time the delinquency occurred.

(e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation or payment must be submitted electronically to the commission on the commission's web based reporting system at www.tabc.state.tx.us.

(2) A Seller who cannot access the commission's web based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another seller or service provider to make electronic reports on behalf of the Seller.

(3) All reports of violations or payment under this subsection must be made to the commission on or before the date the delinquent list is published.

(4) A Seller who fails to report a violation or a payment as required by this subsection is in violation of this section.

(f) Prohibited Sales and Delivery.

(1) Sellers are prohibited from selling or delivering alcoholic beverages to any licensed location of a Retailer who appears on the commission's Delinquent List from the date the violation appears on the Delinquent List until the Release Date on the Delinquent List, or until the Retailer no longer appears on the Delinquent List.

(2) A sale or delivery of alcoholic beverages prohibited by this section is a violation of this section.

(g) Prohibited Purchase or Acceptance.

(1) A Retailer who violates subsection (d) of this section is prohibited from purchasing or accepting delivery of alcoholic beverages from any source at any of Retailer's licensed locations from the date any violation occurs until all delinquent payment are paid in full.

(2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.

(h) Exception. A Retailer who wishes to dispute a violation of this section or inclusion on the commission's Delinquent List based on a good faith dispute between the Retailer and the Seller may submit a detailed electronic or paper written statement with the commission with an electronic or paper copy to the Seller explaining the basis of the dispute.

(1) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(C) bank statement or records showing:

(i) bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or

(ii) the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(2) A disputed delinquent payment will not be removed from the delinquent list until documents and/or other records tending to support the Retailer's dispute are submitted to the commission.

(3) The Retailer must immediately submit an electronic notice of resolution of a dispute to the commission under this subsection.

(i) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §11.61(b)(2) of the Code for one or more violations of this section. The commission may consider whether a violation is the result of an event or incident when initiating an action under this subsection.

(j) Delinquent List.

(1) The Delinquent List is published bi-monthly on the commission's public web site at <http://www.tabc.state.tx.us>. An interested person may receive the Delinquent List by electronic mail each date the Delinquent List is published by registering for this service online.

(2) The Delinquent List will be published the 3rd day of the month for purchases made from the 1st to the 15th day of the preceding month, for which payment was not made on or before the 25th day of

the preceding month. The Delinquent List will be published the 18th day of the month for purchases made between the 16th and the last day of the preceding month for which payment was not made on or before the 10th day of the month.

(3) The Delinquent List is effective at 12:01 A.M. on the date of publication.

(4) The Delinquent List is updated hourly to reflect reports of payments submitted.

(k) Calculation of Time. A due date under this section or §102.32(c) of the Code or the publication date of the Delinquent List that would otherwise fall on a Saturday, Sunday or a state or federal holiday, will be the next regular business day. A payment sent by U.S. postal service or other mail delivery service is deemed made on the date postmarked or proof of date delivered to the mail delivery service. A payment hand delivered to an individual authorized to accept payment on behalf of the Seller is deemed made when the authorized individual takes possession of the payment.

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 October 29, 2010.

TRD-201006141

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: November 18, 2010

Proposal publication date: September 10, 2010

For further information, please call: (512) 206-3443



DIVISION 2. CASH LAW

16 TAC §45.131

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §45.131, Payment Regulation for Malt Beverages. The amendment is adopted without changes to the proposal published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8235).

The effect of the proposed amendment is to remove language in the current section that appears to restrict the commission's enforcement authority.

No comments were received regarding the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code; Alcoholic Beverage Code §102.31(e), which authorizes the commission to adopt rules to give effect to that section of the Code; and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Alan Steen
Administrator
Texas Alcoholic Beverage Commission
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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.38

The Texas State Board of Examiners of Psychologists adopts amendments to §465.38, Psychological Services for Public Schools, without changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8246) and will not be republished.

The amendments are adopted to ensure the protection and safety of the public.

The adopted amendments would provide an exemption to the required one year of supervision after licensure as LSSP.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201006134
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: September 10, 2010
For further information, please call: (512) 305-7706



CHAPTER 471. RENEWALS

22 TAC §471.4

The Texas State Board of Examiners of Psychologists adopts the repeal of §471.4, Guaranteed Student Loan Requirement, without changes to the proposal as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8247) and will not be republished.

The repeal is adopted to ensure the protection and safety of the public.

The rule is adopted for repeal because the law on which it is based has changed.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706



22 TAC §471.4

The Texas State Board of Examiners of Psychologists adopts new §471.4, Guaranteed Student Loan Requirement, without changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8247) and will not be republished.

The new rule is adopted to ensure the protection and safety of the public.

The adopted new rule would make the Board rule agree with the law.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

The Texas Department of Transportation (department) adopts the repeal of §§1.21 - 1.33 and simultaneously adopts new §1.21, Scope and Purpose, §1.22, Definitions, §1.23, Computation of Time, §1.24, Filing of Petition; Procedure for Filing Petition and Other Documents, §1.25, Procedure for Service of Documents, §1.26, Content of Petition, §1.27, Examination by Executive Director, §1.28, Initiation of Contested Case, §1.29, Notice of Hearing, §1.30, Standard of Review and Burden of Proof, §1.31, Provisions for Contract Claims, §1.32, Ex parte Communications, §1.33, Issuance of Subpoena or Commission to Take Deposition, §1.34, Form of Subpoena or Commission to Take Deposition, §1.35, Witness Fees, §1.36, Proposal for Decision; Filing of Exceptions and Replies, §1.37, Notification of Decision, and §1.38, Motions for Rehearing, all concerning procedures in contested cases. The repeal of §§1.21 - 1.33 and new §§1.21 - 1.38 are adopted without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 7012) and will not be republished.

EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

Current 43 TAC Chapter 1, Subchapter E describes the procedures to be followed in contested case hearings that are authorized by statute or by the rules of the Texas Transportation Commission (commission). The new sections change provisions related to filing documents, referring a case to the State Office of Administrative Hearings (SOAH), requesting a subpoena, the burden of proof, and standard of review and add provisions on serving documents, ex parte communications, and contract claims. The process of repeal and adoption is used instead of amending the current sections because the rules are being reorganized for clarity and ease of use and using only the amendatory process would result in sections that are difficult to comprehend.

New §1.21 provides that a matter may be the subject of the contested case procedure only if a statute provides that the matter may be the subject of a contested case hearing under the Administrative Procedure Act (Government Code, Chapter 2001) or if a commission rule expressly provides for a hearing under 43 TAC Chapter 1, Subchapter E. New §1.21 omits the statement that is in the current rules that except as provided in 43 TAC Chapter 1, Subchapter E, the procedural rules of SOAH govern a contested case. To comply with Government Code, §2003.050(b), the procedural rules of the commission govern procedural matters that relate to a hearing only to the extent that SOAH's rules adopt the commission's procedural rules by reference.

New §1.22 provides definitions applicable for 43 TAC Chapter 1, Subchapter E. Definitions for terms in current §1.22 that are not included in new §1.22 are "claim" and "contract claim." The definition of claim is no longer needed because, as explained in the explanation of §1.31, the commission will no longer impose the standard of review that relates to contract claims to other types of contested cases, such as an enforcement case related to a license or permit issued under the outdoor advertising program. Therefore, it is no longer necessary to define as a "claim" a contested case concerning those other program areas. The definition of "contract claim" also is not needed. The types of contract claims that may be the subject of a contested case are identified in statute. Current definitions that are being revised for clarity are "administrative law judge", "executive director," "party," "petition," and "petitioner." Under the new rules, the term "judge" is used rather than "administrative law judge." New definitions are adopted for "APA," "contested case," "person," and "SOAH."

New §1.23 states the process that the department will use to compute the deadline for filing a petition or other document that is set by statute or another rule. The section will be used, for example, to determine the last day on which exceptions to the judge's proposal for decision under new §1.36 may be filed.

New §1.24 describes the procedure for filing a petition or other document. Compared to the current rules, the adopted rule adds specific directions on how to file by United States mail, hand delivery, or by facsimile. It specifies when a given filing will be determined to be received by the executive director. The added provisions are intended to add clarity to the process of filing a document with the executive director. The rule does not include the statement in the current §1.23 concerning a contract claim regarding sanctions. That statement is omitted because a contract claim case and a sanctions case are distinct types of matters and because the restriction on when a sanctions case may be referred to SOAH conflicts with the provision in 43 TAC §9.2(i).

New §1.25 describes the procedure for serving a copy of a document, other than a petition, on the other parties. To avoid ex parte communications with the judge, executive director, or commission, the parties in a contested case have usually served a copy of their filings on the other parties. The added provisions are intended to add clarity to the process.

New §1.26 describes the required content of a petition. The rule is generally the same as current 43 TAC §1.24, but is revised for clarity. Section 1.26(c) requires a petition concerning a contract claim include a copy of the claim "and detailed report, if such a report is required by statute or commission rule, that provides the basis of the claim." The requirement is reasonable because a claimant must explain the basis of the claim in detail so that it can be evaluated. Also, as described later concerning §1.31, a claimant may be entitled to interest under the Prompt Payment Act (PPA) (Government Code, Chapter 2251). The department can promptly pay a claim only if the claim is explained. The requirement to submit a detailed report is in current 43 TAC §1.24(c), but applies only to claims under 43 TAC §9.2. The requirement is rephrased to apply to all claims in which a statute or commission rule requires a claim be accompanied by a detailed report. The statute concerning claims on a purchase order, Government Code, §2260.051(c), requires that a notice of claim "must state with particularity" the basis of the claim. Also, it is anticipated the rules relating to claims on purchase orders, 43 TAC §9.1, will be amended in the future to require a detailed report.

New §1.27 describes the executive director's review of a petition, and request for clarification of a deficient petition. The rule does not include the provision in the current 43 TAC §1.25(c) that authorizes the executive director to reject a petition. A court reviewing a similar question related to another state agency determined the agency must refer the petition for hearing, even if only to determine whether the petition was timely. *Hawkins v. Community Health Choice, Inc.*, 127 S.W.3d 322 (Tex. App.-Austin 2004, no pet.). Adopted §1.27(c) concerns a petition filed under a department rule that does not expressly refer to 43 TAC Chapter 1, Subchapter E concerning the filing of the request. This is relevant to petitions filed under 43 TAC §21.149(f) concerning permanent revocation or permanent suspension of an outdoor advertising license, under 43 TAC §21.150(k) concerning cancellation of an outdoor advertising permit along an interstate or primary highway, under 43 TAC §21.572 concerning revocation of an outdoor advertising permit on a rural road or imposition of administrative penalties, and under 43 TAC §28.304 and §28.306 concerning an enforcement action related to oversize and overweight vehicles and loads. The executive director shall examine the request concerning whether it meets the requirements of the rule under which the petition was filed and not 43 TAC Chapter 1, Subchapter E. The executive director may, however, require the petitioner to file an amended petition that also satisfies the requirements of 43 TAC Chapter 1, Subchapter E. The subsection is meant to avoid unfair surprise to petitioners concerning the requirements to file a petition. It is anticipated that the rules listed above concerning the filing of a petition will be amended in the future to include an express reference to 43 TAC Chapter 1, Subchapter E.

New §1.28 describes the executive director's initiation of a contested case by referring the petition to SOAH. The department may initiate a contested case on its own initiative. The rule is generally the same as the current 43 TAC §1.26(a). As described in the preceding paragraph, the executive director may refer a case even if only to request a determination whether the petition was timely. New §1.28 specifies that the executive director's referral may request a summary disposition of the case if the executive director believes the petition was not timely filed or fails to meet other procedural requirements. Section 1.28(c) specifies the department's office of general counsel will transmit all requests for a contested case to SOAH. The requirement will promote uniformity in the processing of requests and facilitate the tracking of cases referred.

New §1.29 describes the required notice of hearing. The rule is generally the same as the current 43 TAC §1.26(b), but imposes on the department the obligation to issue notice in accordance with the instructions of the judge.

New §1.30 describes the standard of review and burden of proof. Section 1.30(a) provides that except for contract claims, the standard of review is reasonableness. With changes as described in the following paragraph, this is the same as current 43 TAC §1.26(c). Section 1.30(b) provides the applicant shall have the burden of proof concerning an application for a permit, license, or other approval from the department. The claimant bears the burden of proof concerning a contract claim. The commission notes that the subsection itself does not confer a right to a contested case hearing concerning an application or contract claim, but only sets the burden of proof assuming the applicant or claimant is entitled to a contested case hearing. As specified in new §1.21, a matter may be the subject of the contested case procedure only if a statute provides that the matter may be the subject of a contested case hearing under

the Administrative Procedure Act (Government Code, Chapter 2001) or if a commission rule expressly provides for a hearing under 43 TAC Chapter 1, Subchapter E. For example, current 43 TAC Chapter 27, Subchapter C concerns a person authorized to construct a private toll project. The person may submit an application to interconnect with the state highway system, and current §27.37(d) provides an applicant is entitled to a contested case hearing under 43 TAC Chapter 1, Subchapter E concerning a decision to deny the application. Section 1.30(c) provides that in a proceeding concerning an enforcement matter, the department bears the burden of proof to show the person's violations of law or department policy. The person bears the burden of proof to show mitigating factors that show enforcement is not necessary. The commission believes this is an appropriate assignment of the burden of proof because in each instance the burden is placed on the person who has the greatest access to information that is the basis of the dispute. Current 43 TAC §1.26(d) provides that a party seeking monetary damages or penalties shall bear the burden of proof. In all other instances, the party challenging a department decision or action shall bear the burden of proof. The commission's current proposal would not effect a change to the first sentence, because department staff in an enforcement case, whether or not they seek a monetary penalty, will have the burden of proof. The commission believes it should change the standard set in the second sentence. The department staff should have the burden of proof in all enforcement cases, and concerning counter-claims filed by the department in a contract claim case, because staff has the greatest access to information concerning the basis for the staff's actions.

New §1.31 describes provisions that are unique to contract claims. Section 1.31(a) provides that the section applies only to a contested case concerning a contract claim. Department claims are processed under 43 TAC §9.1 and §9.2. Section 1.31(b) provides that if the parties to a contract agree to submit questions that arise under the contract to the decision of a department employee, the employee's decision is final and conclusive unless in making the decision, the employee is guilty of fraud, misconduct, or such gross mistake as would imply bad faith or a failure to exercise an honest judgment. This is the standard established in *Texas Department of Transportation v. Jones Brothers Dirt & Paving Contractors, Inc.*, 92 S.W.3d 477 (Tex. 2002). The subsection does not impose this standard of review on other types of disputes that may be the subject of a contested case hearing, as does the current 43 TAC §1.26(c). The change in the rule is appropriate because the precedent set in the *Jones Brothers* case related to interpreting an underlying contract in which the parties agreed to delegate to a specific person the role of resolving disputes. In the absence of a contractual agreement, the standard of review in the *Jones Brothers* case does not apply. Section 1.31(c) applies to a contractor's claims for interest under the Prompt Payment Act. The Austin Court of Appeals has determined that the PPA applies to a contract claim. *State of Texas v. Mid-South Pavers, Inc.*, 246 S.W.3d 711 (Tex. App.-Austin 2007, pet. den'd.). The rule tracks the recommendations of an administrative law judge, which were later adopted by the executive director, in a contested case in which the issue was how to implement the PPA to calculate the interest due. Adding this to the commission's rules will add certainty to the process of calculating interest payments both in settlement negotiations and in contested cases. Section 1.31(d) adds a new provision that a settlement offer concerning a contract claim is an offer to compromise a disputed claim, and its admission into evidence is controlled by Rule 408, Texas

Rules of Evidence. The new provision would replace the current 43 TAC §1.28 which states a settlement offer is not admissible for any purpose, which oversimplifies the rule of evidence.

New §1.32 adds the prohibition on ex parte communications set forth in Government Code, §2001.061. Having the prohibition in the commission's rules will remind parties of this obligation.

New §§1.33 - 1.35 concern the department's issuance of a subpoena or commission to take deposition, including the payment of witness fees, if required. For purposes of clarity, the adopted rules give greater detail compared to the process described in the current 43 TAC §1.27. The new rules authorize the executive director, the general counsel, or an attorney in the office of general counsel to sign a subpoena or commission to take deposition. The new rules require the requestor to file with the executive director both the request and any required witness fees by certified check. After the subpoena is issued, testimony is taken, and the requestor directly pays the witness any required witness fees, the executive director will return to the requestor the certified check filed with the request.

New §1.36 concerns the filing of the proposal for decision, and exceptions and replies to exceptions. The requirements are generally the same as those in the current 43 TAC §§1.29 - 1.31, but have been reorganized and clarified. The new section does not include the provisions of the current 43 TAC §1.33 concerning the judge's extension of time for final order and making a note of this in the proposal for decision. The department believes that the rule has not been used by judges or the department. The deadline for filing exceptions has been changed from 20 days to 15 days after service of the proposal for decision. SOAH's rule, 1 TAC §155.507, requires filing within 15 days. To prevent confusion the new rule uses the same deadline. The new rules specify that the judge, rather than the executive director, would rule upon any request for shortening or extending the deadlines for exceptions or replies to exceptions. It is preferable that the judge continue to manage the case at this point. Also, the change makes the commission's rule consistent with SOAH's rule. Finally, the new rules specify that if the judge submits an amended proposal for decision after reviewing the exceptions and replies, the parties do not have the opportunity to submit additional exceptions. The case is ready for decision.

New §1.37 adds provisions on notification of decision. The commission or the executive director, as specified by statute or commission rule, will issue the decision in a case. No matter who issues the decision, the executive director is responsible for mailing notice of the decision to the parties.

New §1.38 concerns motions for rehearing. The requirements are generally the same as those in the current 43 TAC §1.32, but have been reorganized and clarified. The deadline to file a reply to a motion for rehearing has been changed from 15 days after the filing of the motion to 30 days after the date the party or party's authorized representative is notified of the decision. The Administrative Procedure Act (APA) in Government Code, §2001.146 requires filing 30 days after the date the party or party's authorized representative is notified of the decision. To prevent confusion the new rule uses the same deadline. The new rules do not include the current prohibition against a party requesting an extension of the deadline to file a motion for rehearing. The APA allows a state agency to extend the deadline, within certain limits, and so the change will make the commission's rules more consistent with the APA.

COMMENTS

No comments on the proposed repeals and new sections were received.

SUBCHAPTER E. PROCEDURES IN CONTESTED CASES

43 TAC §§1.21 - 1.33

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.112, which provides the commission with the authority to establish rules governing procedures in certain contract claims, and Government Code, §2001.004, which requires each agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.101 and §201.112 and Government Code, §2001.004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bob Jackson

General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8683



SUBCHAPTER E. PROCEDURES IN CONTESTED CASE

43 TAC §§1.21 - 1.38

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.112, which provides the commission with the authority to establish rules governing procedures in certain contract claims, and Government Code, §2001.004, which requires each agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.101 and §201.112 and Government Code, §2001.004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

The Texas Department of Transportation (department) adopts amendments to §§9.30, 9.31, 9.33 - 9.39 and 9.41 - 9.43; and the repeal of §9.32, concerning contracting for architectural, engineering, and surveying services. The amendments to §§9.30, 9.31, 9.33 - 9.39 and 9.41 - 9.43; and the repeal of §9.32 are adopted without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 7019) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND REPEAL

Architectural, engineering, and surveying services are procured by the department in accordance with Government Code, Chapter 2254, Subchapter A, and 23 C.F.R. §172.5.

The amendments clarify and refine the language to improve consistency in the interpretation and application of procedures for provider precertification, administrative qualifications, and the selection and evaluation of contracts with architects, engineers, and surveyors. The amendments also recognize an organizational change within the department and identify the role that the regions and regional director perform in the contracting process; clarify who may participate in the short list interview and restrictions on participants; remove duplicate provisions related to the Historically Underutilized Business/Disadvantaged Business Enterprise (HUB/DBE) program that are located elsewhere in the Texas Administrative Code, and recognize the transfer of the HUB program from the Texas Building and Procurement Commission to the Comptroller of Public Accounts; require an annual update to data in the precertification database to assist in maintaining current employee status and firm contact information; change the deadline for submission of information regarding administrative qualifications; extend the length of time that an audit report will remain in effect from eighteen to twenty-four months, and reduce the administrative qualifications burden on firms with smaller contracts or those that have a smaller participation in larger contracts.

Amendments to §9.30 delete a reference to Transportation Code, §361.032 because the section was repealed by the 79th Texas Legislature, Regular Session, 2005.

Amendments to §9.31 make grammatical changes to the definitions of "administrative qualification," "indefinite deliverable contract," and "team"; delete the definition of "business opportunity programs section of the construction division" as it is no longer

used; add definitions for "consultant" and "firm"; revise the definition of "consultant selection team" to clarify the roles of the team; clarify the definitions of "DBE/HUB goal participation," "debarment certification," "design division," "letter of interest," "long list," "notice of intent," "precertification," "professional engineer," "registered architect," "registered professional land surveyor," "specific deliverable contract," and "request for proposal"; delete the definitions of "DBE/HUB special provision" and "good faith effort" as these are defined in 43 TAC Chapter 9, Subchapter D, Business Opportunity Programs; delete the definition of "FHWA," since it is not referenced in this subchapter; revise the definition of "historically underutilized business" to reflect transfer of the program to the comptroller of public accounts; revise the definition of "managing office" to clarify responsibility and to include a new organization unit within the department; revise the definition of "managing officer" to include the managing officer of the new organization unit within the department; revise the definition of "prime provider" to include both a provider awarded a contract and one that has submitted a letter of interest as the managing firm; make a grammatical change in the definition of "short list," and clarify that the providers on the short list are selected based on the letter of interest score; and revise the definition of "subprovider" to include a provider performing or proposing to perform work through a contractual relationship with the prime provider. Definitions are renumbered for consistency.

Section 9.32 is repealed. The information in subsection (a), relating to the department's use of private sector professional services, is adequately stated in Transportation Code, §223.041. Section 9.32(b) is moved to a more appropriate location in §9.39 and renamed "Projected contracts."

Amendments to §9.33(a)(1)(A) and (2)(A) delete the reference to the term "proposed contract number" and replace it with the term "solicitation number," which is more accurate, since the number used to identify the solicitation may not be used as the actual contract number. Amendments to §9.33(a)(1)(C) add the definite article "the" to the phrase for clarity and change the reference to §9.39 to reflect the change to the section title. Amendments to §9.33(a)(1)(E) and (2)(C) add the time, in addition to the date, to when the letter of interest is due and clarify that this deadline corresponds to when the letter of interest is to be received by the department, not a deadline by which the letter of interest is to be sent. Amendments to §9.33(a)(1)(I) change the reference to the rule regarding the state's HUB program.

Section 9.33(b) is amended to correct punctuation and to remove redundancies. Amendments to §9.33(b)(1) clarify that the letter of interest must be sent prior to the deadline. Letters of interest must be received by the department before the deadline. Section 9.33(b)(2) is amended to correct a typographical error by changing "LOI" to "NOI," and to eliminate the options to submit a letter of interest by electronic facsimile or by electronic mail. It is the responsibility of the provider to submit the complete letter of interest package including the appropriate number of copies, attachments, and forms by the specified deadline. Currently, a submission by electronic facsimile is allowed for the purpose of meeting the deadline, but the provider is required to submit the originals to be responsive. In response to complaints concerning the accessibility and reliability of this submission method, the department is eliminating this option. Although electronic mail may appear to be a reasonable alternative submission option, it has limitations potentially impacting delivery by the deadline. Examples of common issues with routine electronic mail submission include: 1) the size of the attachments is limited; 2) all incoming electronic mail is subject to evaluation by the department's auto-

mated spam and computer virus detection software and may be subjected to quarantine by the software; and 3) problems viewing and printing documents due to incompatibility of software or versions of software used by the department and those used by the provider. Therefore, this option is excluded as a submission option.

Amendments to §9.33(b)(3)(A) and (C) eliminate an exception to precertification for categories of work that are less than 5% of the contract. There are seventy-eight precertification work categories. A typical engineering contract solicitation uses a number of work categories to detail the anticipated work. Because of the number of categories used, the percent of work estimated for many of the categories is less than 5%, allowing the use of non-precertified providers on many of the categories, defeating the purpose for precertification. Therefore, this option is being eliminated. There are circumstances when a subprovider is needed to support work in a precertified work category, but the work that they perform does not have a unique precertified work category of its own. Amendments to §9.33(b)(3)(B) clarify that the attachment is in addition to the maximum pages allowed for the letter of interest. On some larger projects, there is a need for a specialized service that supports precertified or non-listed work categories, but does not have a dedicated precertified work category. These services are performed by specialized subproviders rather than the prime provider. To identify which work category these subproviders are supporting, new language in §9.33(b)(3)(C) requires the identification of the work category being supported in these situations. Subparagraph (C) is further changed to require that the work category that each subprovider supports be identified in the letter of interest. Amendments to §9.33(b)(3)(D)(i) clarify that the information submitted applies to both the provider and the subprovider and that the attachment is in addition to the maximum number of pages allowed. New §9.33(b)(3)(F) adds a requirement that the provider demonstrate in the letter of interest that it is registered with the appropriate State of Texas licensing board. New §9.33(b)(3)(G) clarifies that to be considered, the letter of interest must be received by the department by the deadline indicated in the notice. Amendments to §9.33(b)(4)(A) delete the reference to the term "contract" and replace it with the term "solicitation," which is more accurate, since the number used to identify the solicitation may not be used as the actual contract number. Amendments to §9.33(b)(4)(B)(i) and (ii) clarify that the project manager may only be replaced by a member of the team identified in the letter of interest and who is an employee of the prime provider, and not a team member from a subprovider. Amendments to §9.33(b)(4)(D) clarify the DBE/HUB goal compliance. Amendments to §9.33(b)(4)(E) - (G) rearrange and delete unnecessary requirements.

Section 9.34(a) is restructured. Renumbered §9.34(a)(1)(A) modifies the designation of the consultant selection team chair. Traditionally, the managing officer selected a staff member from the managing office to be the chair of the consultant selection team. With a focus on efficiency and maximizing the use of limited resources, the department has changed its business model and organizational structure, creating regional centers to support district operations. This change supports the use of a selection team, including the chair, composed of members from multiple managing offices. Amendments to §9.34(a)(2) clarify that at least one of the member of the selection team must be a professional engineer for engineering contracts, a professional engineer or registered or licensed professional land surveyor for surveying contracts, or a registered architect for architectural contracts. Amendments to §9.34(b)(1) and (2)

clarify the use of terms. In many cases it is not an individual firm, but a team composed of multiple firms submitting a letter of interest. New §9.34(d)(4) adds new evaluation criterion related to quality assurance and quality control. This criterion has been used as an additional criterion for several years and is now included as a standard criterion. The department will evaluate the provider's quality assurance and quality control at this step in the process or at the proposal step or interview step. The remaining paragraph in the subsection is renumbered.

Amendments to §9.34(f), relating to the short list, clarify that the selection of the short list is based on the letter of interest score. The highest qualified providers are the providers with the highest scores. Amendments to §9.34(g), relating to Notifications, clarify that the department will notify the prime provider regarding selection or non-selection for the short list. In most cases a letter of interest is submitted by a team, consisting of a number of firms, with a prime provider in the management role and subproviders supporting the effort. The department will notify only the prime provider of selection or non-selection on the short list. New §9.34(h), relating to a short list meeting, is added to this section using current language from §9.35(a) with additional changes. A short list meeting may be held at the discretion of the managing officer, who is most knowledgeable about the complexity of the project. A representative of each provider's team is required to attend the meeting.

Amendments to §9.35 rename the title to "Short List Proposals and Evaluation" to better describe the contents of the section. Section 9.35(a) is deleted and relocated to a more appropriate location in §9.34 as new subsection (h). New §9.35(a)(6), (7), and (8) are added to indicate additional information to be provided in the Request for Proposal (RFP). New §9.35(a)(9) identifies the forms required to be submitted with the proposal. Amendments to §9.35(c), relating to receipt of proposals, clarifies that a proposal will not be accepted by electronic mail. It is the responsibility of the provider to submit the complete proposal package including appropriate number of copies, attachments, and forms by the specified deadline. Although electronic mail may appear to be an attractive alternative submission option, it too has limitations potentially impacting delivery by the deadline. Examples of common issues with routine electronic mail submission include: 1) the size of the attachments is limited; 2) all incoming electronic mail is subject to evaluation by the department's automated spam and computer virus detection software and can be subject to quarantine by the software; and 3) problems viewing and printing documents due to incompatibility of software or versions of software used by the department and those used by the provider. Therefore, this option is excluded as a submission option. New §9.35(d)(5) includes a new evaluation criterion related to quality assurance and quality control. This criterion has been used as an additional criterion for several years and is now included as a standard criterion. The department will evaluate the provider's quality assurance and quality control at the short list determination step, at this step in the process, or at the interview step. Amendments to §9.35(d)(6) require the approval of the Design Division prior to the addition of other criteria for evaluation in the RFP. The purpose is to promote consistency within the department on criteria used to evaluate providers. Amendments to §9.35(e) change the term "scale" to the more correct term "score."

Amendments to §9.36(a) clarify that any proposal and interview requirements will be contained in the RFP or in the interview and contract guide. This subsection is further amended to delete the suggested option of the use of telephone interviews. Although

not precluded, it is not the recommended and preferred format. New §9.36(b) creates interview requirements. New §9.36(b)(3) limits those individuals eligible to participate in the interview to only those team members identified in the letter of interest. New §9.36(b)(4) restricts an individual included as a member on competing teams from participating in multiple interviews. Many providers form teams, consisting of multiple firms, to compete for contracting opportunities. It is common for the same subprovider to participate on multiple competing teams submitting letters of interest. It is also common for the same individual to represent the subprovider on multiple competing teams. If short listed, this individual could potentially participate in multiple interviews for the same contracting opportunity. This provision does not limit a firm from participating on multiple competing teams, but does limit an individual from the firm from participating in multiple interviews. Amendments to §9.36(c)(4), relating to interview and contract guide, change the term "delivered" to "provided" for clarity. New §9.36(c)(7), (8), and (9) are added to indicate additional information to be provided in the interview and contract guide. New §9.36(c)(10) is added to identify forms that are required to be submitted at the interview. The purpose of the interview is to examine the competence and qualifications of the providers through questioning the provider and evaluating the responses. Section 9.36(d) is amended to provide that a provider team will answer a predetermined written set of questions in the interview. The requirement of the submission of written material to support a presentation for later reference is removed from §9.36(d). The change emphasizes that the evaluation will be based on what the provider's presenter conveys in the allotted time during the presentation. Although allowed, the primary focus of the interview is not on the provider's presentation. Relettered §9.36(e), relating to "Interview evaluation criteria," is amended to indicate that the consultant selection team will evaluate responses to interview questions and information conveyed in the presentation. With this amendment, §9.36(e)(4) is deleted as it is now redundant. Amendments to §9.36(e)(2) clarify that the project manager and team will be evaluated not only on their experience, but on their demonstrated competence as well. New §9.36(e)(5) is added to include a new evaluation criterion related to quality assurance and quality control. This criterion has been used as an additional criterion for several years and is now being included as a standard criteria. The department will evaluate the provider's quality assurance and quality control at the short list determination step, at the proposal step, or at this step in the process. Amendments to §9.36(e)(6) require the approval of the Design Division prior to the addition of other criteria for evaluation in the interview and contract guide. The purpose is to promote consistency within the department on criteria used to evaluate providers. Amendments to §9.36(f) change the term "scale" to the more correct term "score."

Amendments to §9.37(c) and (d) correct punctuation errors. The department publishes a list of all selected providers on the department's website; thus, naming the selected providers in the notification letter is redundant. Amendments to §9.37(e)(2) remove the redundancy. Amendments to §9.37(f)(1) and (4) delete language that duplicates the requirements contained in 43 TAC §9.53 and §9.54, relating to Disadvantaged Business Enterprise Program and Historically Underutilized Business (HUB) Program, respectively. Section 9.37(f) is also amended to delete language related to submission of administrative qualifications as it is covered elsewhere in the subchapter. The term "selection" is added to clarify that the selection process complies with the applicable state and federal statutes

and regulations. Amendments to §9.37(f)(2)(A) add the term "providers" for clarity and remove the repeated term "automatic extensions." Amendments to §9.37(f)(2)(B)(i) and (ii) clarify that a discretionary extension can only be acted on when it is received. Amendments to §9.37(f)(3)(B) change the reference to the title of §9.39.

Section 9.38 is renamed to "Contract Administration." Subsection (a) is deleted because the language duplicates the requirements contained in 43 TAC §§9.53, 9.54, and 9.56 relating to Disadvantaged Business Enterprise Program, Historically Underutilized Business Program, and Contract Compliance, respectively. Amendments to §9.38(b)(1) reorganize the paragraph and clarify the role of the department's and the provider's project managers. Section 9.38(b)(3) - (5), relating to commencement of work, suspension of work, and payment of provider contracts, is deleted because these provisions are contained within and governed by the contract. Relettered §9.38(c)(1), relating to supplemental agreements, is amended to state that an amendment to the contract will be made through a supplemental agreement. Amendments to §9.38(c)(2) delete the term "original" in reference to the contract, since a supplemental agreement may be used to amend the terms of a previous supplemental. Amendments to §9.38(e)(2)(B) add clarity to the term "products." New subparagraph (H) is added to §9.38(e)(2) to indicate that an additional condition for contract closeout is the completion and finalization of the final provider performance evaluation. Amendments to §9.38(f)(2) indicate that the project constructability is to be evaluated not less frequently than every 12 months. Amendments to §9.38(f)(4) update citation references.

Section 9.39 is amended to correct grammatical errors and to change the title of the section to "Selection Types, Contract Types, and Projected Contracts." Amendments to §9.39(a)(2)(B) delete the term "randomly." In the case of multiple selections, when there are a greater number of contracts than selected providers, the remaining contracts will be assigned not randomly, but in a logical sequence. Amendments to §9.39(a)(3)(A) clarify that it is the prime provider's project manager that is required to be precertified. Amendments to §9.39(a)(3)(C) clarify the use of terms, substituting the term "provider" for "firm." Amendments to §9.39(b)(1) are made to include the department's new organizational unit, the region. The department created four regional offices, which provide support for multiple districts. New §9.39(c) moves current language from §9.32(b) to this section as a more appropriate location, and renames the subsection "Projected contracts."

Amendments to §9.41(a) clarify that a provider must be precertified to be eligible for selection for a contract and move language from §9.41(a)(2). Section 9.41(a)(1), relating to an exception from precertification when anticipated work for an individual work category less than 5%, is deleted. A typical engineering contract solicitation uses a number of work categories to detail the anticipated work. Because of the number of categories used, the percent of work estimated for many of the categories is less than 5%, allowing the use of non-precertified providers on many of the categories, defeating the purpose for precertification. Therefore, this option is being eliminated. Amendments to §9.41(c), related to deadline, clarify that the categories are individual work categories. Amendments to §9.41(e)(2) clarify that it is the department that determines whether a firm's employee possesses the skills and experience to meet the precertification requirements. Amendments to §9.41(f)(3) add new subparagraph (D) to indicate that the department will consider any record of unprofessional conduct as a factor in reviewing an application for precer-

tification. This is done to protect the department and the general public.

Amendments to §9.41 add new subsection (h), related to annual renewal, and a new subsection (i), related to inactive status. Currently, each provider is required to maintain its precertification information. If there are any changes, the provider is required to update those changes within 45 days. Currently, there is no mechanism to separate active and inactive firms, firms that no longer exist, or employees that are no longer active. For the information to be correct and current, a method of distinguishing between active and inactive firms is required. New §9.41(h) requires the firm to verify annually that its information is correct. All firms that respond annually are considered active. New §9.41(i) bars inactive firms from participating in the selection process until they confirm or update their status.

Currently, an exception from administrative qualifications is made for non-engineering firms and provider services in Group 6 - bridge inspection, Group 12 - materials inspection and testing, Group 14 - geotechnical services, Group 15 - surveying and mapping, and Group 16 - architecture. Amendments to §9.42(a) add a list of factors that the department's Audit Office and Design Division will evaluate when exceptions for other provider services are requested. Section 9.42(b) is reworded for clarity and to change the date when the administrative qualifications information is due to the department to the letter of interest due date. Currently, the deadline to submit the information is prior to the execution of the contract, which is the final step in selection process. Because the current deadline is so late in the process, any delay in submission of the information delays contract negotiation, execution, and the ability to commence project work. To minimize the potential for delays in completing the process and initiating work, the deadline is being moved to a point earlier in the process. Amendments to §9.42(c), relating to evaluation factors, clarify that the qualifications being evaluated are administrative qualifications. Amendments to §9.42(c)(2) delete a reference to deleted §9.42(c)(2)(E). Amendments to §9.42(c)(2)(A) clarify that the accepted auditing standards are government auditing standards and correct the reference to the Federal Acquisition Regulations. Amendments to §9.42(c)(2)(C) modify the reporting period and deadline. This change is intended to assist providers in determining whether existing information is still in effect for a particular solicitation. The length of time that an audit report will remain in effect is extended from eighteen months to twenty-four months from the end of the fiscal period; this extends the time an audit report will remain in effect. Amendments to §9.42(c)(2)(D) reorganize the subparagraph. The changes increase the threshold for the requirement for an indirect cost rate audit from \$250,000 to \$500,000 for existing firms and for firms in operation for less than one fiscal year. In these cases, to facilitate negotiations, the Audit Office will provide the managing office with an indirect rate, based on indirect cost rates data for providers of comparable size. Section 9.42(c)(2)(E) is deleted. Amendments to §9.42(c)(4) delete the modifiers "other direct" in describing costs. Amendments to §9.42(d) clarify that the Audit Office will only provide the managing office with the administrative qualifications information after the Design Division has notified the Audit Office of the approval of the selection of the provider for the contract.

Amendments to §9.43(a)(1) clarify that the work categories are the precertification categories.

COMMENTS

No comments on the proposed amendments and repeal were received.

43 TAC §§9.30, 9.31, 9.33 - 9.39, 9.41 - 9.43

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.041, regarding the use by the department of private sector professional services for transportation projects, and Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act), which sets forth requirements for selection and contracting of architectural and engineering services.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

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 October 29, 2010.

TRD-201006122

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: November 18, 2010

Proposal publication date: August 13, 2010

For further information, please call: (512) 463-8683



43 TAC §9.32

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.041, regarding the use by the department of private sector professional services for transportation projects, and Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act), which sets forth requirements for selection and contracting of architectural and engineering services.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

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 October 29, 2010.

TRD-201006121

Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: November 18, 2010
Proposal publication date: August 13, 2010
For further information, please call: (512) 463-8683



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

Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for readoption, revision or repeal Title 1, Texas Administrative Code, Chapter 204, §§204.1 - 204.3; §§204.10 - 204.12; and §§204.30 - 204.32, "Interagency Contracts for Information Resources Technologies." The review and consideration of the rule are conducted in accordance with Texas Government Code §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rule was initially adopted continue to exist and whether the rule should be readopted.

Any questions or written comments pertaining to this rule review may be submitted to Renee Mauzy, General Counsel, via mail at P.O. Box 13564, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail at renee.mauzy@dir.texas.gov. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedures Act, Texas Government Code, Chapter 2001.

TRD-201006125
Renee Mauzy
General Counsel
Department of Information Resources
Filed: October 29, 2010



The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for readoption, revision or repeal Title 1, Texas Administrative Code, Chapter 211, §§211.1 - 211.3; §§211.10 - 211.11; and §§211.20 - 211.21, "Information Resources Managers." The review and consideration of the rule are conducted in accordance with Texas Government Code §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rule was initially adopted continue to exist and whether the rule should be readopted.

Any questions or written comments pertaining to this rule review may be submitted to Renee Mauzy, General Counsel, via mail at P.O. Box 13564, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail at renee.mauzy@dir.texas.gov. The deadline for comments is 30 days after publication of this notice in the *Texas*

Register. Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201006126
Renee Mauzy
General Counsel
Department of Information Resources
Filed: October 29, 2010



The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for readoption, revision or repeal Title 1, Texas Administrative Code, Chapter 216, §§216.1 - 216.3; §§216.10 - 216.12; and §§216.20 - 216.22, "Project Management Practices." The review and consideration of the rule are conducted in accordance with Texas Government Code §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rule was initially adopted continue to exist and whether the rule should be readopted.

Any questions or written comments pertaining to this rule review may be submitted to Renee Mauzy, General Counsel, via mail at P.O. Box 13564, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail at renee.mauzy@dir.texas.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*. Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201006127
Renee Mauzy
General Counsel
Department of Information Resources
Filed: October 29, 2010



Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 66, Registration

of Property Tax Consultants. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, 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*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§66.1. Authority.

§66.10. Definitions.

§66.20. Registration Requirements.

§66.21. Pre-registration and Upgrade Education.

§66.22. Examination--Licensed Attorney.

§66.23. Registration--Endorsement.

§66.25. Continuing Education.

§66.65. Advisory Council.

§66.70. Responsibilities of Registrant--General.

§66.71. Responsibilities of Registrant--Records.

§66.72. Responsibilities of Registrant--Private Provider.

§66.80. Fees.

§66.90. Sanctions--Administrative Sanctions/Penalties.

§66.100. Code of Ethics and Professional Responsibility.

TRD-201006228

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: November 3, 2010



The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 71, Warrantors of Vehicle Protection Products. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, 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*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§71.1. Authority.

§71.10. Definitions.

§71.20. Registration and Renewal Requirements--General.

§71.22. Registration Requirements--Financial Security Requirements.

§71.70. Responsibilities of Registrant.

§71.80. Fees.

§71.90. Administrative Penalties and Sanctions.

TRD-201006229

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: November 3, 2010



The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 77, Service Contract Providers and Administrators. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, 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*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§77.1. Authority.

§77.10. Definitions.

§77.20. Registration Requirements--Provider.

§77.21. Registration Renewal Requirements--Provider.

§77.22. Registration Requirements--Administrator.
§77.23. Registration Renewal Requirements--Administrator.
§77.40. Financial Security--General Requirements.
§77.41. Financial Security--Reimbursement Insurance Policy.
§77.42. Financial Security--Funded Reserve Account and Security Deposit.
§77.43. Financial Security--Minimum Net Worth.
§77.70. Responsibilities of Registrant--Provider and Administrator.
§77.80. Fees.
§77.90. Administrative Penalties and Sanctions.
TRD-201006230
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 3, 2010



The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 79, Weather Modification. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, 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*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§79.1. Authority.
§79.10. Definitions.
§79.11 License and Permit Required.
§79.12. License and Permit Exemptions.
§79.13. Application for License.
§79.14. Issuance of License.
§79.15. Renewal of License.
§79.17. Notice of Intention to Obtain Permit.
§79.18. Permit Application.
§79.20. Requests for Public Meeting on Permit Application.
§79.21. Issuance of Permit.
§79.22. Description of Permit.

§79.31. Recordkeeping Requirements.
§79.32. Additional Recordkeeping Requirements for Operations Employing Aircraft.
§79.33. Reporting Requirements.
§79.41 Amendment, Revocation, or Suspension.
§79.42. Good Cause.
§79.43. Notice and Hearing.
§79.44. Emergency Order to Cease Operations.
§79.51. Application for License Amendment.
§79.52. Issuance of License Amendment.
§79.53. Application for Permit Amendment.
§79.54. Issuance of Permit Amendment.
§79.55. Exception for Minor Permit Amendments.
§79.61. Hail Suppression as Objective of Permit.
§79.62. Issuance of Permit When Election Held.
§79.80. Fees.
TRD-201006231
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 3, 2010



The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 80, Licensed Court Interpreters. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, 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*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§80.1. Authority.
§80.10. Definitions.
§80.20. Licensing Requirements--General.
§80.22. License Requirements--Examination.
§80.23. Licensing Requirements--Renewal.

- §80.25. Continuing Education.
- §80.70. Responsibilities of Licensee--General.
- §80.80. Fees.
- §80.90. Sanctions--Administrative Sanctions/Penalties.
- §80.100. Code of Ethics and Professional Responsibility.

TRD-201006232

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: November 3, 2010



The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 82, Barbers. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, 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*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

- §82.1. Authority.
- §82.10. Definitions.
- §82.20. License Requirements--Individuals.
- §82.21. License Requirements--Examinations.
- §82.22. Permit Requirements--Barbershops, Specialty Shops, Dual Shops, Mobile Shops, and Booth Rental.
- §82.23. Permit Requirements--Barber Schools.
- §82.26. License Requirements--Renewals.
- §82.28. Reciprocity or Endorsement and Provisional Licensure.
- §82.29. Establishment Relocation, Change of Ownership, Owner Death or Incompetency.
- §82.31. Licenses--License Terms.
- §82.40. Barber School Tuition Protection Account.
- §82.50. Inspections--General.
- §82.51. Initial Inspections--Inspection of Barber Schools Before Operation.
- §82.52. Periodic Inspections.

- §82.53. Risk-Based Inspections.
- §82.54. Corrective Modifications Following Inspection.
- §82.65. Advisory Board on Barbering.
- §82.70. Responsibilities of Individuals.
- §82.71. Responsibilities of Barbershops, Specialty Shops, and Dual Shops.
- §82.72. Responsibilities of Barber Schools.
- §82.73. Responsibilities of Students.
- §82.74. Responsibilities--Withdrawal, Reentry, or Transfer of Student.
- §82.75. Responsibilities of Registered Examination Proctor.
- §82.76. Responsibilities of Barber Technician.
- §82.77. Barber Refresher Course.
- §82.78. Responsibilities of Mobile Shops.
- §82.80. Fees.
- §82.90. Administrative Penalties and Sanctions.
- §82.100. Health and Safety Definitions.
- §82.101. Health and Safety Standards--Department-Approved Disinfectants.
- §82.102. Health and Safety Standards--General Requirements.
- §82.103. Health and Safety Standards--Hair Cutting, Styling, Treatment and Shaving Services.
- §82.104. Health and Safety Standards--Facial Services.
- §82.105. Health and Safety Standards--Waxing Services.
- §82.106. Health and Safety Standards--Manicure and Pedicure Services.
- §82.107. Health and Safety Standards--Electric Drill Bits.
- §82.108. Health and Safety Standards--Footspas.
- §82.109. Health and Safety Standards--Wig and Hairpiece Services.
- §82.110. Health and Safety Standards--Hair Weaving and Hair Braiding Services.
- §82.111. Health and Safety Standards--Blood and Body Fluids.
- §82.112. Health and Safety Standards--Prohibited Products or Practices.
- §82.113. Health and Safety Standards--FDA.
- §82.114. Health and Safety Standards--Establishments.
- §82.120. Technical Requirements--Curricula.

TRD-201006233

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: November 3, 2010



The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 83, Cosmetologists. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, 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*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

- §83.1. Authority.
- §83.10. Definitions.
- §83.20. License Requirements--Individuals.
- §83.21. License Requirements--Examinations.
- §83.22. License Requirements--Beauty Salons, Specialty Salons, Dual Shops, Mobile Shops, and Booth Rentals (Independent Contractors).
- §83.23. License Requirements--Beauty Culture Schools.
- §83.24. Inactive Status.
- §83.25. License Requirements--Continuing Education.
- §83.26. Licensing Requirements--Renewals.
- §83.28. Reciprocity or Endorsement and Provisional Licensure.
- §83.29. Establishment Relocation, Change of Ownership, Owner Death or Incompetency.
- §83.31. Licenses--License Terms.
- §83.40. Private Beauty Culture School Tuition Protection Account.
- §83.50. Inspections--General.
- §83.51. Initial Inspections--Inspection of Beauty Culture Schools Before Operation.
- §83.52. Periodic Inspections.
- §83.53. Risk-based Inspections.
- §83.54. Corrective Modifications Following Inspection.
- §83.65. Advisory Board on Cosmetology.
- §83.70. Responsibilities of Individuals.

- §83.71. Responsibilities of Beauty Salons, Specialty Salons, Dual Shops, and Booth Rentals.
- §83.72. Responsibilities of Beauty Culture Schools.
- §83.73. Responsibilities of Students.
- §83.74. Responsibilities--Withdrawal, Termination, Transfer, School Closure.
- §83.75. Responsibilities of Registered Examination Proctors.
- §83.78. Responsibilities of Mobile Shops.
- §83.80. Fees.
- §83.90. Administrative Sanctions and Penalties.
- §83.100. Health and Safety Definitions.
- §83.101. Health and Safety Standards--Department-Approved Disinfectants.
- §83.102. Health and Safety Standards--General Requirements.
- §83.103. Health and Safety Standards--Hair Cutting, Styling, and Treatment Services.
- §83.104. Health and Safety Standards--Facial Services.
- §83.105. Health and Safety Standards--Waxing Services.
- §83.106. Health and Safety Standards--Manicure and Pedicure Services.
- §83.107. Health and Safety Standards--Electric Drill Bits.
- §83.108. Health and Safety Standards--Footspas.
- §83.109. Health and Safety Standards--Wig and Hairpiece Services.
- §83.110. Health and Safety Standards--Hair Weaving and Hair Braiding Services.
- §83.111. Health and Safety Standards--Blood and Body Fluids.
- §83.112. Health and Safety Standards--Prohibited Products or Practices.
- §83.113. Health and Safety Standards--FDA.
- §83.114. Health and Safety Standards--Establishments.
- §83.120. Technical Requirements--Curriculum.

TRD-201006234

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: November 3, 2010



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.

Coastal Coordination Council

Notice of the 2011 - 2015 Texas Coastal Management Program Section 309 Assessment and Strategies Report

Notice is hereby given that the Texas General Land Office, on behalf of the Coastal Coordination Council, is soliciting public comment on the 2011 - 2015 Texas Coastal Management Program Section 309 Assessment and Strategies Report. The report includes an assessment of progress made from 2006 - 2010 and strategies for achieving the goals of the Texas Coastal Management Program pursuant to Section 309 of the Coastal Zone Management Act of 1972, as reauthorized in 1990. A copy of the draft report may be found at <http://www.glo.texas.gov/GLO/public-notices/index.html>.

All comments must be written and submitted by December 3, 2010. To submit comments on the draft report or for more information, contact Ms. Kate Zultner, Coastal Coordination Council Secretary, c/o Texas General Land Office (GLO), Stephen F. Austin Building, 1700 North Congress Avenue, Room 335, Austin, Texas 78701-1495, (512) 936-9581, or kate.zultner@glo.state.tx.us.

TRD-201006236

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: November 3, 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 11/08/10 - 11/14/10 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 11/08/10 - 11/14/10 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 11/01/10 - 11/30/10 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 11/01/10 - 11/30/10 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

³For variable rate commercial transactions only.

TRD-201006212

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 1, 2010

East Texas Council of Governments

Public Notice

The East Texas Council of Governments is accepting proposals from experienced individuals, organizations, or teams to provide branding services for our fleet of transit vehicles. Consideration will be given to proposals presenting paint and/or wrap branding or a combination of both.

This is an open and competitive process. Proposal packets are available in electronic format by going to www.etcog.org. The proposal packet may also be obtained by submitting a request to Scott Lewis by fax (903) 931-1440, or by email at scott.lewis@etcog.org.

Deadline to submit a proposal is 12:00 p.m. (noon, CST) on November 29, 2010. Proposals will be open and read at the ETCOG office after this date and time. The East Texas Council of Governments reserves the right to reject any and/or all proposals and to waive any technicalities in the best interest of these entities.

The East Texas Council of Governments is an equal opportunity employer. Auxiliary Aids and Services are available upon request.

EAST TEXAS COUNCIL OF GOVERNMENTS

3800 Stone Road

Kilgore, TX 75662

(903) 984-8641

TDD: 711 or 1-800-735-2989

FAX: (903) 983-1440

TRD-201006112

Lindsay Vanderbilt

Communications Manager

East Texas Council of Governments

Filed: October 27, 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 **December 13, 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 require-

ments 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 December 13, 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: City of Alvin; DOCKET NUMBER: 2010-0523-MWD-E; IDENTIFIER: RN101721553; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 Texas Administrative Code (TAC) §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010005001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for carbonaceous biochemical oxygen demand, ammonia nitrogen (NH₃-N), total suspended solids (TSS), E. coli, and flow; 30 TAC §305.125(17) and TPDES Permit Number WQ0010005001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring report (DMR); and 30 TAC §305.125(17) and TPDES Permit Number WQ0010005001, Biomonitoring Requirements Numbers 3.b(2) and (3), by failing to timely submit the biomonitoring DMRs; PENALTY: \$68,160; ENFORCEMENT COORDINATOR: J. R. Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: AMAKANOKIYA, INC. dba Walker's Food Store; DOCKET NUMBER: 2010-0953-PST-E; IDENTIFIER: RN101747632; LOCATION: Bacliff, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.246(5) 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: \$3,415; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: ANANTKRUPA ENTERPRISE, LLC dba Diamond Mart; DOCKET NUMBER: 2010-1138-PST-E; IDENTIFIER: RN102425386; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases; and 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month; PENALTY: \$4,901; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Aqua Utilities, Inc.; DOCKET NUMBER: 2010-0787-MWD-E; IDENTIFIER: RN101516268; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011193001, Permit Conditions Number 2.g, and the Code, §26.121, by failing to prevent the unauthorized discharges of wastewater; 30 TAC §305.125(1) and (5) and §317.4(g)(2), TPDES Permit Number WQ0011193001, Interim Effluent Limitations and Monitoring Requirements Number 4, Permit Conditions Number 2.d, and Operational Requirements Number 1, and the Code, §26.121, by failing to prevent the discharge of excessive solids and foam into the receiving stream; 30 TAC §305.125(1), TPDES Permit Number WQ0011193001, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121, by failing to comply with the permitted effluent limits for E.coli and NH₃-N; 30 TAC §305.125(1) and (5) and §317.6(b)(1)(D) and (E) and TPDES Permit Number WQ0011193001, Operational Requirements Number 1, by failing to provide forced mechanical ventilation in the chlorine store room and to maintain the self-contained breathing apparatus; and 30 TAC §305.125(1) and §319.11(d) and TPDES Permit Number WQ0011193001, Monitoring and Reporting Requirements Number 2.a, by failing to provide accurate flow measurements that conform to those prescribed in the Water Measurements Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the executive director; PENALTY: \$86,860; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Brookeland Fresh Water Supply District; DOCKET NUMBER: 2010-1029-PWS-E; IDENTIFIER: RN101437861; LOCATION: Jasper County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide sanitary control easements; 30 TAC 290.44(h)(1)(A), by failing to ensure that the proper backflow prevention device or air gap is installed at all locations where an actual or potential contamination hazard exists; 30 TAC §290.46(f)(3)(B)(vi), by failing to maintain records of the facility's backflow prevention device programs; and 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(a)(1), by failing to provide a well production capacity of 0.6 gallons per minute (gpm) per connection; PENALTY: \$3,242; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Cargill Meat Solutions Corporation; DOCKET NUMBER: 2010-1265-AIR-E; IDENTIFIER: RN101615839; LOCATION: Friona, Parmer County; TYPE OF FACILITY: meat packing plant; RULE VIOLATED: 30 TAC §116.110(a) and §116.315(a) and THSC, §382.0518(a) and §382.085(b), by failing to submit an application for renewal at least six months, but no later than 18 months, prior to expiration of a permit and continuing to operate the plant without authorization after the permit expired; and 30 TAC §101.20(1) and §116.115(c), 40 Code of Federal Regulations (CFR) §60.48c(g)(1), New Source Review (NSR) Permit Number 40299, Special Conditions (SC) Numbers 7 and 14, and THSC, §382.085(b), by failing to maintain information and data sufficient to demonstrate compliance with the permit; PENALTY: \$37,926; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(7) COMPANY: CCC GROUP, INC.; DOCKET NUMBER: 2010-1228-IHW-E; IDENTIFIER: RN100674803; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: industrial contractor; RULE VIOLATED: 30 TAC §335.2(b), by failing to prevent the shipment of Class One industrial solid waste to an unauthorized facility for storage; and 30 TAC §335.6(d), by failing to ensure that

any person who transports hazardous or Class One waste shall notify the executive director of such activity on forms furnished or approved by the executive director; PENALTY: \$2,875; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Chem-Pruf Door Company, Limited; DOCKET NUMBER: 2010-1123-AIR-E; IDENTIFIER: RN100244433; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: fiberglass manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 19777A, General Conditions Number 8, and THSC, §382.085(b), by failing to maintain the volatile organic compound and acetone emissions within the permitted annual emissions rates; PENALTY: \$8,175; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 1804 Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Chevron Phillips Chemical Company, LP; DOCKET NUMBER: 2010-1154-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 46783, Maximum Allowable Emission Rates, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; Supplemental Environmental Project (SEP) offset amount of \$4,000 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: DHARANI ENTERPRISES, INC. dba Rosenberg Shamrock; DOCKET NUMBER: 2010-1202-PST-E; IDENTIFIER: RN101748200; LOCATION: Rosenberg, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §115.246(3) and (4) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; 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(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition and free of defects; PENALTY: \$9,030; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2010-1114-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §101.20(1) and (3) and §116.715(a), 40 CFR §60.102(a)(1), Flexible Permit Number 49138 and Permit Numbers PSD-TX-768M1, PSD-TX-799, PSD-TX-802, PSD-TX-932, and PSD-TX-992M1, SC Numbers 13, 16, 17, and 18, and THSC, §382.085(b), by failing to maintain emission levels below one pound (lb) of particulate matter per 1,000 lbs. of coke burned; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to report an emissions event within 24 hours after the discovery; and 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 49138 and Permit Numbers PSD-TX-768M1, PSD-TX-799, PSD-TX-802, PSD-TX-932, and PSD-TX-992M1, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY:

\$20,614; SEP offset amount of \$10,307 applied to Texas Air Quality Research Center at Lamar University - *Flare Speciation and Air Quality Modeling*; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Feron Corporation dba Zebra Show Bar; DOCKET NUMBER: 2010-1075-PWS-E; IDENTIFIER: RN105449151; LOCATION: Anthony, El Paso County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notice of the failure to sample; PENALTY: \$10,318; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(13) COMPANY: Flint Hills Resources, LP; DOCKET NUMBER: 2010-1099-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Number 16989/PSD-TX-794, SC Number 1, Federal Operating Permit Number O-01317, SC Number 16, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$28,350; SEP offset amount of \$11,340 applied to Southeast Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Gulf Coast Waste Disposal Authority; DOCKET NUMBER: 2010-1032-IWD-E; IDENTIFIER: RN100219211; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: industrial wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ01054, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted limits for total organic carbon; PENALTY: \$14,175; SEP offset amount of \$11,340 applied to Galveston Bay Foundation - "Marsh Mania"; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: J.E. Kingham Construction Company, Limited; DOCKET NUMBER: 2010-1289-WQ-E; IDENTIFIER: RN105709117; LOCATION: Livingston, Polk County; TYPE OF FACILITY: school construction site; RULE VIOLATED: TPDES General Permit Number TXR15NR90 Part III, Sections F.2(A) and F.6, and the Code, §26.121(a), by failing to properly design and maintain sediment controls to retain sediment on-site and to remove sediment accumulations that escape the site at a frequency that minimizes off-site impacts; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: City of Joaquin; DOCKET NUMBER: 2010-1346-MWD-E; IDENTIFIER: RN102095437; LOCATION: Joaquin, Shelby County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0012718001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limitations for flow, NH₃-N, and TSS; PENALTY: \$3,220; ENFORCEMENT COORDINATOR: J.R. Cao, (512) 239-2543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: Lake Livingston Water Supply and Sewer Service Corporation; DOCKET NUMBER: 2010-1323-PWS-E; IDENTIFIER: RN101284867; LOCATION: Polk County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(d)(2)(A), by failing to operate the disinfection equipment to continuously maintain a disinfectant residual of 0.2 milligrams per liter of free chlorine throughout the distribution system; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; and 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling tap on the discharge pipe of each well; PENALTY: \$392; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Linde Gas North America, LLC; DOCKET NUMBER: 2010-1248-IHW-E; IDENTIFIER: RN103080487; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: carbon monoxide manufacturing plant; RULE VIOLATED: 30 TAC §335.221(a)(6), 40 CFR §266.102(e)(7)(ii), and Hazardous Waste Permit Number 50391 V.I.3.b.2, by failing to maintain an automatic waste feed cutoff system within a hazardous waste boiler; and 30 TAC §335.221(a)(6), 40 CFR §266.102(e)(2)(i)(A), and Hazardous Waste Permit Number 50391 V.I.2.A, by failing to maintain the hazardous waste feed rate under the permit limit; PENALTY: \$3,220; ENFORCEMENT COORDINATOR: Carlie Konkol, (512) 239-0735; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: NextEra Energy Project Management, LLC; DOCKET NUMBER: 2010-0564-PWS-E; IDENTIFIER: RN105871891; LOCATION: Sterling County; TYPE OF FACILITY: wind farm with PWS; RULE VIOLATED: 30 TAC §290.39(c) and THSC, §341.035(a), by failing to obtain commission approval of the facility prior to commencing construction; 30 TAC §290.39(m), by failing to provide written notification to the commission prior to the startup of a new PWS system; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data and obtain commission approval of the well prior to utilizing the well as a drinking water source; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing that is a minimum of 18 inches above the finished floor or natural ground surface; 30 TAC §290.41(c)(3)(C), by failing to completely seal the annular space between the casing and drill hole with cement under pressure; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends a minimum of three feet from the well in all directions; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent that is covered with a 16-mesh or finer corrosion-resistant screen, faces downwards, and is elevated to minimize the drawing in of contaminants; 30 TAC §290.41(c)(3)(M), by failing to provide a well sampling cock on the discharge pipe of each well pump; 30 TAC §290.419(c)(3)(N), by failing to provide a flow measuring device for the well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.419(c)(3)(F), by failing to disinfect the well for six hours upon well completion; 30 TAC §290.41(c)(3)(F)(i), by failing to collect samples for microbiological analysis; 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to protect the well unit and the pressure tank with an intruder-resistant fence with lockable gates or with a lockable building that is designed to exclude possible contamination or damage to the facility; 30 TAC §290.42(b)(1), by failing to provide disinfection facilities for the groundwater supply to ensure microbiological control and distribution protection; 30 TAC §290.42(l), by failing to compile and maintain a plant operations manual for operator review and reference; 30 TAC §290.43(d)(2), by failing to provide a pressure release device for the pressure tank; 30 TAC §290.45(d)(2)(A)(ii) and THSC, §341.0315(c),

by failing to provide a minimum pressure tank capacity of 200 gallons; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to have all production, treatment, and distribution facilities under the direct supervision of a water works operator who holds a Class "D" or higher license; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's pressure tank; and 30 TAC §290.46(n)(2), by failing to prepare and maintain an accurate and up-to-date map of the distribution system; PENALTY: \$6,272; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(20) COMPANY: NOORANI & BROTHERS, INC. dba Shop N Go; DOCKET NUMBER: 2010-1131-PST-E; IDENTIFIER: RN103020822; LOCATION: Houston, Harris 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(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; PENALTY: \$4,100; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Nouveau Construction and Technology Services, LP; DOCKET NUMBER: 2010-1718-WQ-E; IDENTIFIER: RN105982532; LOCATION: Corpus Christi, Nueces 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: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(22) COMPANY: Saeed Zoobairie dba Oasis Mart; DOCKET NUMBER: 2010-1219-PST-E; IDENTIFIER: RN101434280; LOCATION: Austin, Travis 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; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection for the piping associated with the USTs; 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)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of inventory control records; and 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system; PENALTY: \$4,241; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(23) COMPANY: City of Pampa; DOCKET NUMBER: 2010-1357-AIR-E; IDENTIFIER: RN100211416; LOCATION: Gray County; TYPE OF FACILITY: municipal solid waste landfill; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), General Operating Permit Number O-02357, Site-wide Requirements (b)(2), and THSC, §382.085(b), by failing to submit a semi-annual deviation report; PENALTY: \$1,290; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(24) COMPANY: Port O'Connor Municipal Utility District; DOCKET NUMBER: 2010-1175-MWD-E; IDENTIFIER: RN102916525; LOCATION: Calhoun County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013693001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limitations for NH₃-N, pH,

and TSS; PENALTY: \$5,280; SEP offset amount of \$4,224 applied to National Audubon Society - *Sundown Island Sanctuary Anti-erosion, Re-vegetation and Pest Control Project*; ENFORCEMENT COORDINATOR: Martha Hott, (512) 239-2587; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(25) COMPANY: RAHEELA ENTERPRISES, INC. dba Fast Break Texaco; DOCKET NUMBER: 2010-1481-PST-E; IDENTIFIER: RN101446706; 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 the USTs for releases; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: Ranger Utility Company; DOCKET NUMBER: 2010-0864-PWS-E; IDENTIFIER: RN101273761; LOCATION: Bowie County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii), by failing to provide two or more service pumps having a total capacity of two gpm per connection; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system; PENALTY: \$1,695; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(27) COMPANY: RETAIL MAX, INC. dba Step N Go; DOCKET NUMBER: 2010-1170-PST-E; IDENTIFIER: RN102359528; LOCATION: Beaumont, Jefferson 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; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that the USTs are monitored in a manner which will detect a release; 30 TAC §334.50(b)(2)(A) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 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 §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; and 30 TAC §334.42(i), by failing to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system; PENALTY: \$9,675; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(28) COMPANY: STAR FUELS, INC. dba Star Fuels Clarewood; DOCKET NUMBER: 2010-1098-PST-E; IDENTIFIER: RN102449485; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II equipment in proper operating condition; and 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: \$10,396; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(29) COMPANY: Texans Texaco; DOCKET NUMBER: 2010-1719-PST-E; IDENTIFIER: RN101673218; LOCATION: Temple, Bell

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 delivery certificate prior to receiving fuel; PENALTY: \$875; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(30) COMPANY: West Yukon Estates, LLC; DOCKET NUMBER: 2010-1362-PWS-E; IDENTIFIER: RN102682192; LOCATION: Huffman, Harris County; TYPE OF FACILITY: mobile home park with PWS; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to collect routine samples; PENALTY: \$3,310; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201006213

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 2, 2010



Notice of Availability of the Draft October 2010 Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft October 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 October 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 December 13, 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-201006162

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 1, 2010

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Notice of Receipt of Application and Intent to Obtain a
Municipal Solid Waste Permit Amendment

Permit Number 1307D

APPLICATION. Waste Management of Texas, Inc., c/o Atascocita Recycling and Disposal Facility, 1001 Fannin Street, Suite 4000, Houston, Harris County, Texas 77002, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to their current Type I municipal solid waste permit. The applicant is requesting a major amendment to the permit for a horizontal expansion at the existing Atascocita Recycling and Disposal Facility, to provide long-term waste disposal capacity for communities in Harris County and surrounding areas. The facility is located at 3623 Wilson Road, Humble, Harris County, Texas 77396. The TCEQ received the application on September 24, 2010. The permit application is available for viewing and copying at the Octavia Fields Library, 1503 S. Houston Avenue, Humble, Harris County, Texas 77338.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future

correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from Waste Management of Texas, Inc. at the address stated above or by calling Mr. Steve Jacobs, Director of Landfill Operations at (512) 272-6245 or (713) 512-6345.

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-201006246
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 3, 2010

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Notice of Water Quality Applications

The following notice was issued on October 22, 2010 through October 29, 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

UNITED STATES DEPARTMENT OF THE ARMY which operates Camp Stanley Storage Activity, a military base, has applied for a major amendment to TPDES Permit No. WQ0003849000 to authorize the discharge of treated metal cutting wastewater via new internal Outfall 101 on an intermittent and flow variable basis prior to its ultimate discharge via Outfall 001. The existing permit authorizes the discharge of treated domestic wastewater and vehicle wash water at a daily average flow not to exceed 30,000 gallons per day via Outfall 001; treated groundwater at a daily average flow not to exceed 86,000 gallons per day via Outfall 002; treated groundwater at a daily average flow not to exceed 86,000 gallons per day via Outfall 003; and treated groundwater at a daily average flow not to exceed 60,000 gallons per day via Outfall 004. The facility is located at 25800 Ralph Fair Road on Camp Stanley, approximately one mile northeast of the intersection of Interstate Highway 10 and Ralph Fair Road (Farm-to-Market Road 3351), Bexar County, Texas 78015.

WE HEREFORD LLC which operates an ethanol production facility, has applied for a renewal of TCEQ Permit No. WQ0004827000, which authorizes the disposal of cooling tower blowdown, boiler blowdown, and water treatment wastes at a daily average flow not to exceed 78,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility is located southeast of the intersection of Progressive Road and State Highway 60, Deaf Smith, Texas. The evaporation ponds are located offsite, approximately 1,000 feet south of the intersection of County Road 6A and FM Road 2943, Deaf Smith County, Texas 79045. The facility and land application site are located in the drainage area Upper Prairie Dog Town Fork Red River in Segment No. 0229 of the Red River Basin.

THE CITY OF HUGHES SPRINGS has applied for a renewal of TPDES Permit No. WQ0010415001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 1/4 mile south of combined State Highway 49 and State Highway 11 and approximately 1/2 mile west of the three-way intersection of State Highway 49, State Highway 11, and Farm-to-Market Road 2612 in the City of Hughes Springs in Cass County, Texas 75656.

THE CITY OF DAINGERFIELD has applied for a renewal of TPDES Permit No. WQ0010499001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located approximately 5,500 feet southeast of the intersection of U.S. Highway 259, Farm-to-Market Road 11 and Farm-to-Market Road 49 in Morris County, Texas 75638.

PURE UTILITIES LC has applied for a renewal of TPDES Permit No. WQ0011465001, 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 at 334 White Forest Lane, approximately 1,250 feet north of Farm-to-Market Road 2457 at a point approximately 3 miles west of the intersection of Farm-to-Market Road 2457 and U.S. Highway 190, near the east shore of Lake Livingston in Polk County, Texas 77351.

PURE UTILITIES LC has applied for a renewal of TPDES Permit No. WQ0011621001, 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 at 337 Harbor Drive, approximately 3,000 feet north of Farm-to-Market Road 2457 and approximately 12 miles northwest of the City of Livingston on the east shore of Lake Livingston in Polk County, Texas 77351.

RITA LAURA REDOW KARBALAI has applied for a renewal of TPDES Permit No. WQ0012399001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 12117 Aldine-West-

field Road, 4,000 feet south of the intersection of Aldine-Westfield Road and Aldine Mail Road; 3.5 miles east of the intersection of Interstate Highway 45 and Farm-to-Market Road 149 in Harris County, Texas 77093.

CAMP OLYMPIA INC has applied for a renewal of TPDES Permit No. WQ0014261001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 723 Olympia Drive at Camp Olympia, approximately 4.7 miles southeast of the intersection of State Highway 94 and State Highway 3188 in Trinity County, Texas 75862.

ARBOR WAY INC has applied for a renewal of TCEQ Permit No. WQ0014649001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 430,000 gallons per day via surface irrigation of 170 acres of a golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 1,200 feet northwest of the intersection of Haynie Flat Road and Travis Lakeside Drive in Travis County, Texas 78669.

CITY OF CENTER has applied for a renewal of TPDES Permit No. WQ0014720001 which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 96,000 gallons per day. The facility is located north of Lake Center, approximately three miles south-southeast of the intersection of State Highway 96 and State Highway Spur 500 in Shelby County, Texas 75935.

OCEAN MOBILE HOME PARK LLC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014980001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) 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. The facility will be located at 7030 Tri-City Road (FM 2354), approximately 9.3 miles south of the intersection of Farm-to-Market Roads 565 and 2354, in Beach City in Chambers County, Texas 77523.

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-201006245

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 3, 2010

Texas Health and Human Services Commission

Notice of Correction - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) published a public notice of its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act in the October 22, 2010, issue of the *Texas Register* (35 TexReg 9551). The announcement incorrectly identified the effective date as October 23, 2011. The correct effective date is October 23, 2010.

The amendment modifies the current reimbursement methodology in the Texas Medicaid State Plan for Case Management for Infants and Toddlers with Development Delays program by ending the Time and Financial Information system which is used to collect time and financial information.

TRD-201006248

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: November 3, 2010



Public Notice

The Texas Health and Human Services Commission (HHSC) will post the draft Temporary Assistance for Needy Families (TANF) State Plan on the HHSC Internet web site at <http://www.hhsc.state.tx.us/> for public review by November 12, 2010. Comments may be submitted during

the public comment period that begins November 12, 2010 and ends December 27, 2010. Comments must be submitted in writing to Hilary Davis, Texas Works Policy, MC-2039, 909 W. 45th Street, Austin, Texas 78751 or electronically to hilary.davis@hhsc.state.tx.us. For additional information or a copy of the TANF State Plan, contact Hilary Davis at (512) 206-5556.

TRD-201006247

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: November 3, 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	Amendment #	Date of Action
Throughout TX	Absolute Integrity Testing LLC	L06367	Spring	00	10/05/10

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Lowther Consulting Inc.	L06042	Abilene	03	10/12/10
Allen	Texas Health Presbyterian Hospital Allen	L05765	Allen	21	09/28/10
Arlington	The University of Texas at Arlington	L00248	Arlington	49	10/12/10
Austin	Seton Healthcare dba Seton Medical Center Williamson	L06128	Austin	13	09/30/10
Austin	Seton Healthcare dba Seton Medical Center Austin	L02896	Austin	112	09/30/10
Austin	Seton Healthcare dba University Medical Center at Brackenridge	L00268	Austin	114	09/30/10
Austin	Seton Healthcare dba Dell Children's Medical Center of Central Texas	L06065	Austin	21	09/30/10
Austin	Seton Healthcare dba Seton Medical Center Hays	L06254	Austin	08	09/30/10
Austin	Texas Oncology	L06206	Austin	03	09/29/10
Austin	Cedra Corporation	L04427	Austin	18	10/01/10
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	126	10/08/10
Cleburne	Johns Manville	L01482	Cleburne	23	10/07/10
Corpus Christi	McTurbine Inc.	L04341	Corpus Christi	10	10/06/10
Corpus Christi	A. Lee Guinn, M.D. P.A. dba Longevity and Wellness Center of South Texas	L05799	Corpus Christi	07	10/12/10
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	104	09/28/10
Dallas	Mallinckrodt Inc.	L03580	Dallas	70	10/04/10
Dallas	Southern Methodist University	L00443	Dallas	26	10/05/10
Dallas	Texas Health Presbyterian Hospital Dallas	L04288	Dallas	28	10/12/10
Denison	UHS of Texoma Inc.	L01624	Denison	65	10/01/10
Edinburg	Doctors Hospital at Renaissance Ltd. dba Doctors Hospital at Renaissance	L05761	Edinburg	26	10/12/10
El Paso	Southwest X-Ray L.P.	L05207	El Paso	10	09/29/10
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L04758	El Paso	28	10/07/10
Fort Worth	Fort Worth Heart P.A.	L05480	Fort Worth	33	10/08/10
Fort Worth	Texas Oncology P.A.	L05606	Fort Worth	20	10/12/10
Fort Worth	Physician Reliance L.P. dba Texas Oncology at Klabzuba	L05545	Fort Worth	38	10/12/10
Garland	Garland Cardiac Imaging L.P.	L05948	Garland	04	10/04/10
Garland	Baylor Medical Center at Garland	L01565	Garland	49	10/11/10
Harlingen	South Heart Clinic PLLC	L06301	Harlingen	01	10/07/10
Houston	American Diagnostic Tech LLC	L05514	Houston	58	10/01/10
Houston	One Step Diagnostic Inc.	L05990	Houston	07	10/06/10
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	158	10/01/10
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	159	10/13/10

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Humble	Memorial Hermann Hospital Systems dba Memorial Hermann Northeast	L02412	Humble	85	10/07/10
Lewisville	Columbia Medical Center of Lewisville Subsidiary L.P. dba Medical Center of Lewisville	L02739	Lewisville	56	10/13/10
Lubbock	Cardinal Health Nuclear Pharmacy Services	L06290	Lubbock	01	10/11/10
Lufkin	Memorial Medical Center of East Texas	L01346	Lufkin	82	10/11/10
McAllen	Valley Positron LLC	L05869	McAllen	04	10/01/10
McKinney	Cardiac Center of Texas P.A.	L05744	McKinney	12	10/06/10
Pasadena	CHCA Bayshore L.P.	L00153	Pasadena	89	10/11/10
Plano	Doctors of Internal Medicine	L06086	Plano	01	09/28/10
Port Arthur	ARPA Advanced Radiation Physics Associates L.P.	L06275	Port Arthur	02	10/01/10
Round Rock	Texas Oncology P.A.	L06349	Round Rock	01	10/07/10
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	189	10/01/10
San Antonio	Schnitzler Cardiovascular Consultants	L05792	San Antonio	11	10/01/10
San Antonio	Medi-Physics Inc. dba G.E. Healthcare	L04764	San Antonio	40	09/29/10
San Marcos	Texas State University - San Marcos	L03321	San Marcos	32	10/01/10
Sherman	Texas Oncology P.A. dba Texas Cancer Center Sherman	L05019	Sherman	23	10/04/10
Stephenville	Texas Health Harris Methodist Hospital Stephenville	L03097	Stephenville	34	09/24/10
Texarkana	Christus Health Ark-La-Tex dba Christus Saint Michael Health System	L04805	Texarkana	25	09/29/10
Texarkana	Brim Health of Texas LLC dba Wadley Regional Medical Center	L06242	Texarkana	02	10/06/10
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	83	10/07/10
Throughout TX	Desert Industrial X-Ray L.P.	L04590	Abilene	112	10/13/10
Throughout TX	J-W Wireline Company	L06132	Addison	14	10/05/10
Throughout TX	Team Industrial Services Inc.	L00087	Alvin	220	10/13/10
Throughout TX	Shell Oil Products U.S. dba Deer Park Refining L.P.	L04554	Deer Park	32	10/13/10
Throughout TX	Pavetex Engineering and Testing Inc.	L05533	Dripping Springs	13	10/11/10
Throughout TX	H & H X-Ray Services Inc.	L02516	Flint	85	10/07/10
Throughout TX	Kiewit Infrastructure South Company	L04569	Fort Worth	25	10/07/10
Throughout TX	Bonded Inspections Inc.	L00693	Garland	84	10/11/10
Throughout TX	Pioneer Wireline Services LLC	L06220	Graham	06	10/11/10
Throughout TX	Applied Technical Services Inc.	L06282	Kemah	04	10/05/10
Throughout TX	City of Lubbock	L01735	Lubbock	37	10/14/10
Throughout TX	Dunagin Transport Company	L06272	Merkel	01	10/05/10
Throughout TX	Quantum Technical Services Inc.	L03731	Pasadena	32	10/05/10
Throughout TX	Tracerco	L03096	Pasadena	73	10/08/10
Throughout TX	Fugro Consultants Inc.	L04322	Pasadena	106	10/12/10
Throughout TX	Luminant Mining Company LLC	L06081	Tatum	07	10/13/10
Tomball	Northwest Houston Heart Center	L05958	Tomball	07	10/12/10
Tyler	Cardiovascular Associates of East Texas P.A.	L04800	Tyler	23	10/04/10
Winnsboro	Mother Frances Hospital - Winnsboro	L03336	Winnsboro	28	10/08/10

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Baylor College of Medicine	L00680	Houston	103	10/11/10
Throughout TX	Professional Services Industries	L04939	Corpus Christi	15	10/06/10
Throughout TX	Globe Engineers Inc.	L05527	Dallas	05	10/04/10
Throughout TX	Professional Services Industries	L04941	Longview	10	10/06/10
Throughout TX	Amtech Building Sciences Inc.	L04486	Richardson	12	10/12/10
Throughout TX	Professional Services Industries	L04946	San Antonio	11	10/06/10
Throughout TX	Professional Services Industries	L04943	Victoria	08	10/06/10

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Longview	Longview Diagnostic Imaging dba Open Imaging of Longview	L05621	Longview	08	10/06/10

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-201006235
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: November 3, 2010

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 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	Amendment #	Date of Action
Duncanville	Dallas Oncology Consultants P.A.	L06352	Duncanville	00	10/29/10
Grapevine	Logistics Systems Incorporated	L06337	Grapevine	00	10/15/10
Houston	Methodist Health Centers dba Methodist West Houston Hospital	L06358	Houston	00	10/22/10

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Amarillo	The Don and Sybil Harrington Cancer Center	L03053	Amarillo	48	10/19/10
Arlington	Arlington Memorial Hospital dba Texas Health Arlington Memorial Hospital	L02217	Arlington	98	10/28/10
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	127	10/19/10
Bedford	Columbia North Hills Outpatient Imaging Center Subsidiary LP dba Bedford Imaging Center	L03455	Bedford	56	10/19/10
Borger	WRB Refining LLC dba Conocophillips Company	L02480	Borger	56	10/28/10
Burnet	Seton Healthcare dba Seton Highland Lakes Hospital	L03515	Burnet	43	10/22/10
College Station	Texas A&M University	L00448	College Station	132	10/15/10
Dallas	Methodist Hospitals of Dallas Radiology Services	L00659	Dallas	80	10/15/10
Dallas	Cardinal Health	L02048	Dallas	134	10/19/10
Denison	UHS of Texoma Inc. dba Texoma Medical Center	L01624	Denison	66	10/20/10
Fort Worth	Oncology Hematology Consultants P.A. dba The Center for Cancer and Blood Disorders	L05919	Fort Worth	15	10/26/10
Houston	Memorial Hermann Hospital System dba Memorial Hospital Memorial City	L01168	Houston	122	10/18/10
Houston	Texas Childrens Hospital	L04612	Houston	50	10/22/10
Houston	E+ PET Imaging II LP dba PET Imaging of Houston	L05620	Houston	09	10/29/10
Houston	One Step Diagnostic Inc.	L05990	Houston	08	10/20/10
Houston	Houston Northwest Operating Company LLC dba Houston Northwest Medical Center	L06190	Houston	09	10/26/10
Kingsville	Texas A&M University Kingsville	L01821	Kingsville	44	10/26/10
Kingwood	KPH Consolidation Inc. dba Kingwood Medical Center	L04482	Kingwood	27	10/13/10
Lewisville	Texas Oncology P.A. dba Lake Vista Cancer Center	L05526	Lewisville	16	10/29/10
Llano	Llano County Hospital Authority dba Llano Memorial Healthcare System	L04438	Llano	28	10/22/10
Lubbock	Cardinal Health	L02737	Lubbock	60	10/20/10
Lubbock	Cardinal Health Nuclear Pharmacy Services	L06290	Lubbock	02	10/20/10
Lubbock	Covenant Medical Center	L00483	Lubbock	145	10/19/10
Lubbock	Covenant Health System dba Covenant Medical Center Lakeside	L01547	Lubbock	94	10/26/10
Lufkin	Temple Imaging Center	L05839	Lufkin	07	10/26/10
N. Richland Hills	Columbia North Hills Hospital Subsidiary LP dba North Hills Hospital	L02271	N. Richland Hills	69	09/23/10

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
New Braunfels	Cancer Care Network of South Texas P.A.	L05717	New Braunfels	17	10/27/10
Pasadena	CHCA Bayshore LP dba Bayshore Medical Center	L00153	Pasadena	90	10/15/10
Pasadena	CHCA Bayshore LP dba Bayshore Medical Center	L00153	Pasadena	91	10/20/10
Pasadena	Equistar Chemicals LP	L04409	Pasadena	06	10/19/10
Rockdale	Rockdale Blackhawk LLC dba Richards Memorial Hospital	L06092	Rockdale	02	10/21/10
Rowlett	Lake Pointe Operating Company LLC dba Lake Pointe Medical Center	L04060	Rowlett	17	10/20/10
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	125	10/28/10
San Antonio	South Texas Cardiovascular Consultants PLLC	L03833	San Antonio	33	10/22/10
San Antonio	Methodist Healthcare System of S.A. Ltd. dba The Gamma Knife Center	L05076	San Antonio	27	10/13/10
San Antonio	Radiation Oncology of San Antonio P.A. dba Oncology San Antonio	L05853	San Antonio	13	10/22/10
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	27	10/20/10
Sugar Land	U.S. Imaging Inc. dba Fort Bend Imaging	L04459	Sugar Land	34	10/15/10
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs dba Sulphur Springs Family Health Care Associates	L05701	Sulphur Springs	18	10/27/10
Sunnyvale	Texas Regional Medical Center Ltd. dba Texas Regional Medical at Sunnyvale	L06246	Sunnyvale	01	10/15/10
Throughout TX	Kleinfelder Central Inc.	L01351	Austin	72	10/25/10
Throughout TX	ATC Group Services Inc. dba ATC Associates Inc.	L05920	Carrollton	05	10/20/10
Throughout TX	Marco Inspection Services LLC	L06072	Kilgore	33	10/22/10
Throughout TX	Quantum Technical Services Inc.	L03731	Pasadena	33	10/19/10
Throughout TX	Professional Service Industries	L04946	San Antonio	12	10/21/10
Throughout TX	IHI Southwest Technologies Inc.	L05278	San Antonio	15	10/15/10
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	161	10/25/10
Tyler	East Texas Medical Center	L00977	Tyler	147	10/20/10
Tyler	Mother Frances Hospital	L01670	Tyler	160	10/25/10
Tyler	The University of Texas Health Science Center at Tyler	L04117	Tyler	45	10/27/10
Victoria	Invista Sarl	L00386	Victoria	84	10/19/10
Webster	CHCA Clear Lake LP dba Clear Lake Regional Medical Center	L01680	Webster	77	10/18/10
Wichita Falls	WFCC Radiation Management Company LLC dba Texoma Cancer Center	L06288	Wichita Falls	01	10/13/10
Winnsboro	Mother Frances Hospital-Winnsboro	L03336	Winnsboro	29	10/13/10
Winnsboro	Mother Frances Hospital-Winnsboro	L03336	Winnsboro	30	10/27/10

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Sugar Land	Houston Cardiovascular Consultants LLP dba Houston Cardiovascular Imaging	L05350	Sugar Land	16	10/15/10

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Alvin	Solutia Inc.	L00219	Alvin	86	10/26/10
Austin	Texas Oncology P.A. dba Positron Imaging of Austin	L05696	Austin	08	10/22/10
Throughout TX	Key Electric Wireline Services LLC	L06003	Houston	07	10/20/10

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-201006237
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: November 3, 2010

Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: November 2, 2010



Notice of Stakeholder Meeting

The Department of State Health Services (department) will hold a stakeholder meeting regarding the implementation of the bonding requirements set forth in §431.408 of the Texas Health and Safety Code and the department’s proposed bonding rules, which are being adopted and are included in Title 25 of the Texas Administrative Code, Chapter 229, Subchapter W, Licensing of Wholesale Distributors of Prescription Drugs - Including Good Manufacturing Practices, §§229.419 - 229.430. This stakeholder meeting will be held on Wednesday, December 1, 2010, starting at 8:00 a.m. at the Department of State Health Services, Moreton Building, Room M-653, 1100 West 49th Street, Austin, Texas.

This meeting will allow stakeholders the opportunity to verbally provide to the department any comments, questions, or concerns regarding the implementation of department bonding rules, 25 Texas Administrative Code §229.424(n) and §229.425(h). A copy of the proposed rules, which were published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6460), may be obtained by contacting Karen Tannert at Karen.Tannert@dshs.state.tx.us.

Please contact Karen Tannert, Policy Standards and Quality Assurance Unit, Drugs and Medical Devices Group, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, or telephone (512) 834-6755 should you have additional questions.

TRD-201006218



Texas Department of Housing and Community Affairs

Notice of Request for Proposals to Provide Monitoring and/or Inspection Services for the Weatherization Assistance Program

The Texas Department of Housing and Community Affairs (the "Department") is requesting proposals to provide monitoring and/or inspection services for the Weatherization Assistance Program (WAP). The Department is requesting proposals to provide subrecipient monitoring and/or inspection services for the Weatherization Assistance Program as needed and according to state and federal rules, standards and guidelines. Successful vendors will be hired as needed by the Department to provide services within the State of Texas. Multiple contractors may be selected and assigned work by the Department.

For more information, see the Request for Proposals (RFP) at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=91657. Responses to the RFP are due to the Department by 4:00 p.m. on November 30, 2010.

TRD-201006244
 Michael Gerber
 Executive Director
 Texas Department of Housing and Community Affairs
 Filed: November 3, 2010



Texas Incentive and Productivity Commission

Obsolete Rules

The Office of the Secretary of State intends to remove the following rules from the Texas Administrative Code in 30 days:

Title 1. Administration

Part 13. Texas Incentive and Productivity Commission

Chapter 271. Procedural Rules

Chapter 273. State Employee Incentive Program

House Bill 874, 81st Legislature, 2009, abolished the Texas Incentive and Productivity Commission.

Government Code, §2002.058, directs the secretary of state to remove a state agency's rules from the Texas Administrative Code after the agency has been abolished. The text of the obsolete rules is available in the Texas Administrative Code on the secretary of state's web site.

Once the rules are removed from TAC, the rule text will continue to be available on the secretary of state's website as part of the historical Texas Administrative Code database and in the Texas Register office at 1019 Brazos, Room 245, Austin, Texas.

TRD-201006138



Legislative Budget Board

Tax Relief Amendment Implementation - Limit on Growth of Certain State Appropriations

Legal References

Article VIII, Sec. 22(a), Texas Constitution, approved by the voters in November 1978, states that: In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.

This provision does not alter, amend, or repeal Article III, Section 49a, of the Texas Constitution, the well known "pay-as-you-go" provision.

To implement this provision of the Texas Constitution, the Sixty-sixth Legislature enacted Article 9, Chapter 302, Laws 1979 (Tex. Government Code Ann., Sec. 316) which placed with the Legislative Budget Board the responsibility for initial approval of a limitation on the growth of certain state appropriations. A part of the procedure for approving the limitation is set forth in Sections 316.003 and 316.004 as follows: Sec. 316.003. Before the Legislative Budget Board approves the items of information required by Section 316.002, the board shall publish in the *Texas Register* the proposed items of information and a description of the methodology and sources used in the calculations. Sec. 316.004. Not later than December 1 of each even-numbered year, the Legislative Budget Board shall hold a public hearing to solicit testimony regarding the proposed items of information and the methodology used in making the calculations required by Section 316.002.

The items of information mentioned above are identified as follows in Section 316.002:

- (1) the estimated rate of growth of the state's economy from the current biennium to the next biennium;
- (2) the level of appropriations for the current biennium from state tax revenues not dedicated by the constitution; and
- (3) the amount of state tax revenues not dedicated by the constitution that could be appropriated for the next biennium within the limit established by the estimated rate of growth of the state's economy.

In this memorandum, each item of information is taken up in the order listed above.

Estimated Rate of Growth of the State's Economy

A definition of the "estimated rate of growth of the state's economy" is set forth in paragraph (b) of Section 316.002 in the following words:

(b) Except as provided by Subsection (c), the board shall determine the estimated rate of growth of the state's economy by dividing the estimated Texas total personal income for the next biennium by the estimated Texas total personal income for the current biennium. Using standard statistical methods, the board shall make the estimate by projecting through the biennium the estimated Texas total personal income reported by the United States Department of Commerce or its successor in function.

(c) If a more comprehensive definition of the rate of growth of the state's economy is developed and is approved by the committee established by Section 316.005, the board may use that definition in calculating the limit on appropriations.

The Commerce Department's Bureau of Economic Analysis defines state personal income as follows: the income received by persons from all sources, that is, from participation in production, from both government and business transfer payments, and from government interest. Personal income is the sum of wage and salary disbursements, supplements to wages and salaries, proprietors' income, rental income of persons, personal dividend income, personal interest income and transfer payments, less personal contributions for social insurance.

Table 1 displays the Commerce Department's personal income account for Texas for calendar year 2009. The largest component of Texas personal income is wage and salary disbursements, estimated at \$488.7 billion during calendar 2009. Salary and wage disbursements are added with supplements to wages and salaries, primarily employer contributions to private pensions and welfare funds, and proprietors' income to arrive at total earnings by place of work. Texas total earnings by place of work reached an estimated \$726.5 billion in calendar year 2009.

In deriving Texas total personal income, two adjustments are made to total earnings by place of work. Personal contributions for social insurance contributions, principally social security payroll taxes paid by employees and self-employed, are deducted. A place-of-residence adjustment is also made to reflect the earnings of workers who cross state borders to live or work. Dividends, interest and rent income are then added, along with transfer payments. The major types of transfer payments include social security, various retirement and unemployment insurance benefits, welfare, and disability and health insurance payments. Texas total personal income is estimated to be \$987.4 billion for calendar year 2009.

The U.S. Department of Commerce reports personal income estimates by calendar quarter and year. Since the state's fiscal year begins on September 1 and ends August 31, an adjustment is required to present these data on a biennial basis. The Legislative Budget Board uses the data for the first three calendar quarters of a year plus the fourth quarter of the preceding year to represent the state's fiscal year. A biennium is the sum of two fiscal years. The historical record of the rate of growth in Texas personal income for the past fourteen completed biennia using the most recent data published by the U.S. Department of Commerce is shown in Table 2.

Forecasting Texas Personal Income

In reviewing standard statistical techniques for forecasting or projecting Texas personal income, the Legislative Budget Board has obtained the latest economic forecasts from the following sources listed alphabetically: (1) IHS Global Insight, (2) Moody's Economy.com, (3) Per-

ryman Group, (4) Texas Comptroller of Public Accounts and (5) University of North Texas Center for Economic Development & Research. These forecasts are based on econometric models developed and maintained by the forecasting services listed.

The Texas Comptroller of Public Accounts is currently completing a new forecast of Texas personal income. This forecast, which will be available prior to the Legislative Budget Board's November 15, 2010 hearing, will take into account the most recent changes in the national and state economies.

While each forecasting service brings its own approach to the development of economic projections, there are several characteristics common to the econometric models from which the Texas total personal income estimates are derived. First, each assumes that the U.S. economy is the driving force behind Texas economic activity. As a result, forecasts of U.S. economic variables are needed to drive each model. Secondly, each of the econometric models is structural in nature, representing certain assumptions about the structure of the Texas economy, consistent with economic theory. Structural models normally entail detailed modeling of key sectors of the state's economy, followed by statistical testing to establish relationships with other sectors of the economy. Previous memoranda published on the constitutional limit include additional discussion of the forecasting methods used. See the following issues of the *Texas Register*: (5 TexReg 4272), (7 TexReg 3727), (9 TexReg 5219), (11 TexReg 4590), (13 TexReg 4599), (15 TexReg 6876), (17 TexReg 7702), (19 TexReg 9053), (21 TexReg 10919), (23 TexReg 11472), (25 TexReg 11735), (27 TexReg 10977), (29 TexReg 10612), (31 TexReg 9641), and (33 TexReg 9109).

Table 3 details the Texas personal income growth rates of the various forecasting services for the 2012-13 biennium over the 2010-11 biennium. These forecasts range from 1.0463 or 4.63 percent to 1.1313 or 13.13 percent.

The personal income growth rates shown in Table 3, or any more recent forecasts if available, will be presented to the Legislative Budget Board for its consideration in adopting this item of information. The Board is not limited to one, or any combination of the growth rates, when adopting a Texas personal income growth rate for the 2012-13 biennium.

Table 4 briefly outlines the sources and dates for the Texas personal income growth rates presented in Table 3.

Appropriations from State Tax Revenue Not Dedicated by the Constitution - 2010-11 Biennium

The amount of appropriations from state tax revenue not dedicated by the Constitution in the 2010-11 biennium, the base biennium, is the second item of information to be determined by the Legislative Budget Board. As of November 3rd, 2010 the staff estimates this amount to be \$71,665,225,913. This item multiplied by the estimated rate of growth of Texas personal income from the 2010-11 biennium to the 2012-13 biennium produces the limitation on appropriations for the 2012-13 biennium under Article VIII, Section 22, of the Texas Constitution.

Calculating the 2012-13 Limitation

The limitation on appropriations of state tax revenue not dedicated by the State Constitution in the 2012-13 biennium may be illustrated by selecting a growth rate and applying it to the 2010-11 appropriations base. This is shown in Table 5, using the lowest and highest growth rates shown in Table 3. Depending on which personal income growth rate is adopted, current estimates suggest a limitation on 2012-13 biennial appropriations from tax revenue not dedicated by the Constitution ranging from \$75.0 billion to \$81.1 billion.

Method of Calculating 2010-11 Appropriations from State Tax Revenue Not Dedicated by the Constitution

As stated above, LBB staff estimates the amount of appropriations from state tax revenue not dedicated by the Constitution in the 2010-11 biennium to be \$71,665,225,913. This section details the sources of information used in this calculation.

Total appropriations for the 2010-11 biennium include those made by the in Eighty-first Legislature in Senate Bill 1 (General Appropriations Act), House Bill 4586 (Supplemental Appropriations), and House Bill 2729 (Miscellaneous Claims). Any subsequent appropriations made by the Eighty-second Legislature for the 2010-11 biennium would also be included in total appropriations.

Section I of Table 6 shows, for general revenue related funds, the total amount of appropriations, the amount of total appropriations financed from constitutionally dedicated tax revenue, the amount financed from non-tax revenue and the remainder--the amount financed from tax revenue not dedicated by the Constitution--which is the amount subject to the limitation. General revenue related funds include the General Revenue Fund as well as the Available School Fund, State Textbook Fund and Foundation School Fund.

I. General Revenue Related Funds

A. Appropriations are classified in this table as the following: (1) "estimated to be" line item appropriations, and (2) all other line item appropriations.

1. "Estimated to Be" Line Item Appropriations: Each of these items under the subheading "estimated to be" may change under certain circumstances. For purposes of this calculation, most fiscal year 2010 amounts are based on actual 2010 expenditures. Most amounts for fiscal year 2011 are taken from Senate Bill 1, Eighty-first Legislature.

2. All Other Line Item Appropriations: As calculated in Table 7, the amount shown for "All Other Line Items" is the difference between total appropriations and the items listed separately as "estimated to be appropriations." General revenue related appropriations in Table 7 are from Senate Bill 1, Eighty-first Legislature. Appropriation figures have been adjusted to incorporate certain Article IX appropriations, as well as Governor's vetoes, House Bill 2729 and House Bill 4586.

B. Source of Funding - General Revenue Related: Table 6, Part B shows that of the \$81,885,340,605 of general revenue related fund appropriations, \$66,829,446,818 is subject to the limitation because it is financed from state tax revenue not dedicated by the Constitution.

Constitutionally dedicated state tax revenues deposited into general revenue related funds are estimated to total \$3,489,781,294 during the 2010-11 biennium. Appropriations from general revenue related funds financed from non-tax revenue are estimated at \$11,566,112,494 for the 2010-11 biennium.

II. Appropriations from Funds Outside of General Revenue

The state imposes a sales and use tax on boats and boat motors, of which 95 percent is deposited into the General Revenue Fund and the remaining five percent is deposited into Account 0009 - Game, Fish and Water Safety. The state imposes an insurance companies maintenance tax which is deposited into Account 0036 - Texas Department of Insurance Operating.

A portion of the motor vehicles sales tax, franchise tax and cigarette tax is deposited into Account 0304 - Property Tax Relief. The state also taxes the sale of fireworks, a portion of which is deposited into Account 5066 - Rural Volunteer Fire Department Insurance. In addition, part of the sales tax and a motor vehicles sales tax is deposited into Account 5071 - Emissions Reduction Plan. Furthermore, a portion of tobacco

tax revenue is deposited into Account 5144 - Physician Education Loan Repayment Program.

Appropriations from tax revenue not dedicated by the Constitution in these accounts are included in this calculation. The appropriations and revenues are based on actual 2010 and estimated 2011 data.

Grand Total

A grand total of \$87,268,125,156 in 2010-11 biennial appropriations is included in this analysis. Of this amount, \$3,489,781,294 is financed out of taxes dedicated by the State Constitution. Another

\$12,113,090,265 is financed out of non-tax revenue. The remaining \$71,665,225,913 is financed out of tax revenue not dedicated by the State Constitution. This amount serves as a base for calculating the limitation on 2012-13 biennial appropriations from tax revenue not dedicated by the Constitution, as required by Article VIII, Section 22, of the Texas Constitution.

TABLE 1
U.S. DEPARTMENT OF COMMERCE PERSONAL
INCOME ACCOUNT FOR TEXAS, CALENDAR YEAR 2009
In Millions of Current Dollars

Earnings by Place of Work	Amount	Percent of Total
Wage and Salary Disbursements	\$488,709	67.3%
Supplements to Wages and Salaries	111,464	15.3%
Proprietors' Income		
Farm	\$15	
Nonfarm	<u>126,361</u>	
Subtotal	<u>126,376</u>	<u>17.4%</u>
Total Earnings by Place of Work	\$726,548	100.0%
 Derivation of Total Personal Income		
Earnings by Place of Work (from above)	\$726,548	
Less: Personal Contribution for Social Insurance	\$37,068	
Plus: Adjustment for Residence	<u>(1,880)</u>	
Equals: Net Earnings by Place of Residence	\$687,600	69.6%
Plus: Dividends, Interest and Rent	158,860	16.1%
Plus: Personal Current Transfer Receipts	<u>140,968</u>	<u>14.3%</u>
 Total Personal Income	 \$987,428	 100.0%

Note: Totals may not add due to rounding.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, October 2010.

TABLE 2
BIENNIUM-TO-BIENNIUM GROWTH RATES IN TEXAS PERSONAL INCOME
1982-83 TO 2008-09 BIENNIA

Base Biennium	Target Biennium	Growth Rate	Percent Increase
1980-81	1982-83	1.253	25.3
1982-83	1984-85	1.171	17.1
1984-85	1986-87	1.085	8.5
1986-87	1988-89	1.095	9.5
1988-89	1990-91	1.148	14.8
1990-91	1992-93	1.135	13.5
1992-93	1994-95	1.130	13.0
1994-95	1996-97	1.157	15.7
1996-97	1998-99	1.175	17.5
1998-99	2000-01	1.162	16.2
2000-01	2002-03	1.055	5.5
2002-03	2004-05	1.122	12.2
2004-05	2006-07	1.176	17.6
2006-07	2008-09	1.141	14.1

TABLE 3
ESTIMATED GROWTH RATES FOR TEXAS PERSONAL INCOME
USING FIVE ECONOMETRIC MODELS
2010-11 BIENNIUM TO 2012-13 BIENNIUM

Source of Forecast	2012-13 Texas Personal Income Growth Rate
1. IHS Global Insight	1.1074
2. Moody's Economy.com	1.1140
3. Perryman Group	1.1313
4. Texas Comptroller of Public Accounts*	
5. University of North Texas Center for Economic Development & Research	1.0463

* The Texas Comptroller of Public Accounts is currently completing a new forecast of Texas personal income. This forecast, which will be available prior to the Legislative Budget Board's November 15, 2010 hearing, will take into account the most recent changes in the national and state economies.

Note: The growth rates shown above can be interpreted in percentage terms. For example, the growth rate of 1.1074 for the IHS Global Insight forecast of Texas personal income indicates estimated personal income growth of 10.74 percent for the 2012-13 biennium.

TABLE 4
SUMMARY OF SOURCES AND METHODS FOR
TEXAS PERSONAL INCOME GROWTH RATES FOR THE
2012-13 BIENNIUM

Source of Forecast	Type of Forecast	Date of Forecast
1. IHS Global Insight	Econometric	October 2010
2. Moody's Economy.com	Econometric	October 2010
3. Perryman Group	Econometric	October 2010
4. Texas Comptroller of Public Accounts*	Econometric	
5. University of North Texas Center for Economic Development & Research	Econometric	October 2010

* The Texas Comptroller of Public Accounts is currently completing a new forecast of Texas personal income. This forecast, which will be available prior to the Legislative Budget Board's November 15, 2010 hearing, will take into account the most recent changes in the national and state economies.

Source: Compiled by the Legislative Budget Board, November 2010.

TABLE 5
TWO ILLUSTRATIONS OF A POSSIBLE
LIMIT ON 2012-13 BIENNIUM APPROPRIATIONS
OF STATE TAX REVENUE NOT DEDICATED BY
THE TEXAS CONSTITUTION
In Millions of Dollars

1. 2010-11 Base	\$ 71,665.2	\$ 71,665.2
2. Illustrative Growth Rates	<u>X 1.0463</u>	<u>X 1.1313</u>
3. 2012-13 Limitation on Growth in Appropriations	<u>\$ 74,983.3</u>	<u>\$ 81,074.8</u>

TABLE 6
2010-11 BIENNIAL APPROPRIATIONS
INCLUDED IN THE CALCULATION OF
THE LIMITATION BASE

I. General Revenue Related Funds	2010 Expenditures/
A. Appropriations	2011 Appropriations
1. "Estimated To Be" Line Item Appropriations in General Appropriations Act, 81st Legislature	
(a) Office of the Attorney General	\$ 197,593,252
B.1.1. Strategy: Child Support Enforcement	
(b) Fiscal Programs - Comptroller of Public Accounts	1,292,027
A.1.1. Strategy: Voter Registration	
(c) Fiscal Programs - Comptroller of Public Accounts	25,403,345
A.1.2. Strategy: Miscellaneous Claims	
(d) Fiscal Programs - Comptroller of Public Accounts	259,000,766
A.1.4. Reimbursement - Beverage Tax	
(e) Fiscal Programs - Comptroller of Public Accounts	5,880,310
A.1.6. County Taxes - University Lands	
(f) Fiscal Programs - Comptroller of Public Accounts	293,875,071
A.1.8. Unclaimed Property	
(g) Funds Appropriated to the Comptroller for Social Security and BRP	986,699,626
A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion)	
(h) Employees Retirement System	1,926,302,799
A. Goal: Administer Retirement Program (GR Portion) & B. Goal: Provide Health Program (GR Portion)	
(i) Department of State Health Services	19,871,297
Vendor Drug Rebates—Public Health	
(j) Department of State Health Services	1,093,493
D.1.6. Strategy: Texasonline	
(k) Health and Human Services	51,197,011
Medicaid Program Income	
(l) Health and Human Services	645,508,170
Vendor Drug Rebates—Medicaid	
(m) Health and Human Services	2,413,846
Cost Sharing - Medicaid Clients	
(n) Health and Human Services	100,570,872
Vendor Drug Rebates-Supplemental Rebates	
(o) Health and Human Services	9,061,598
Premium Co-Payments, Low Income Children	
(p) Health and Human Services	15,121,851
Experience Rebates-CHIP	
(q) Health and Human Services	11,711,270
Vendor Drug Rebates-CHIP	

(r)	Texas Education Agency	33,098,765
	B.3.6. Strategy: Certification Exam Administration	
(s)	School For The Blind And Visually Impaired	281,614
	C.1.1. Strategy: Educ Prof Salary Increases	
(t)	School For The Deaf	331,940
	C.1.1. Strategy: Educ Prof Salary Increases	
(u)	Teacher Retirement System	2,863,306,310
	A.1.1. Strategy: TRS - Public Education - (GR Portion)	
(v)	Teacher Retirement System	377,311,029
	A.1.2. Strategy: TRS - Higher Education Retirement (GR Portion)	
(w)	Teacher Retirement System	521,423,131
	A.2.1. Strategy: Retiree Health - Statutory Funds (GR Portion)	
(x)	Optional Retirement Program	250,689,111
	A.1.1. Strategy: Optional Retirement Program (GR Portion)	
(y)	Office Of Court Administration, Texas Judicial Council	24,406
	C.1.2. Strategy: Texasonline	
(z)	Judiciary Section, Comptroller's Department	93,550,444
	A: Goal - D: Goal (GR Portion)	
(aa)	Department Of Public Safety	1,190,984
	E.4.1. Strategy: Texasonline	
(ab)	Department Of Housing And Community Affairs	30,240
	E.1.4. Strategy: Texasonline	
(ac)	Texas Lottery Commission	190,487,426
	A.1.6. Strategy: Lottery Operator Contract	
(ad)	Texas Lottery Commission	24,805,283
	B.1.5. Strategy: Bingo Prize Fee Allocations	
(ae)	Board Of Chiropractic Examiners	57,848
	A.1.2. Strategy: Texasonline	
(af)	Texas State Board Of Dental Examiners	429,824
	A.2.2. Strategy: Texasonline	
(ag)	Funeral Service Commission	82,670
	A.1.2. Strategy: Texasonline	
(ah)	Board Of Professional Geoscientists	47,280
	A.1.2. Strategy: Texasonline	
(ai)	Department Of Insurance	386,444
	A.2.4. Strategy: Texasonline	
(aj)	Board Of Professional Land Surveying	28,370
	A.1.3. Strategy: Examination	
(ak)	Board Of Professional Land Surveying	29,949
	A.1.4. Strategy: Texasonline	
(al)	Department Of Licensing And Regulation	788,481

	A.1.5. Strategy: Texasonline	
(am)	Texas Medical Board	694,580
	A.1.2. Strategy: Texasonline	
(an)	Texas Board of Nursing	760,363
	A.1.2. Strategy: Texasonline	
(ao)	Optometry Board	34,885
	A.1.2. Strategy: Texasonline	
(ap)	Board Of Pharmacy	468,976
	A.1.2. Strategy: Texasonline	
(aq)	Executive Council Of Physical Therapy & Occupational Therapy Examiners	288,890
	A.1.2. Strategy: Texasonline	
(ar)	Board Of Plumbing Examiners	287,232
	A.1.2. Strategy: Texasonline	
(as)	Board Of Podiatric Medical Examiners	8,855
	A.1.2. Strategy: Texasonline	
(at)	Board Of Examiners Of Psychologists	65,534
	A.1.2. Strategy: Texasonline	
(au)	Racing Commission	43,255
	B.1.2. Strategy: Texasonline	
(av)	Real Estate Commission	647,331
	A.1.2. Strategy: Texasonline	
(aw)	Residential Construction Commission	7,919
	A.1.2. Strategy: Texasonline	
(ax)	Residential Construction Commission	162,016
	B.1.3. Strategy: Third-Party Inspections	
(ay)	Board Of Tax Professional Examiners	-
	A.1.2. Strategy: Texasonline	
(az)	Board Of Veterinary Medical Examiners	67,855
	A.1.2. Strategy: Texasonline	
(ba)	Multiple Agencies: Earned Federal Funds	116,040,974
	Sec. 6.26. Definition, Appropriation, Reporting and Audit of Earned Federal Funds	
(bb)	Adjustment for Texas Education Agency Attendance Credit Revenue	423,000,000
(bc)	Adjustment for Property Tax Relief Fund Shortfall	764,077,926
	Subtotal, "Estimated to Be" Line Item Appropriations	<u>\$10,217,634,744</u>
2.	All Other Line Items	<u>\$ 71,667,705,861</u>
	TOTAL (General Revenue Related Fund Appropriations)	<u>\$ 81,885,340,605</u>

	<u>Total</u> <u>Appropriations</u>	<u>Constitutionally</u> <u>Dedicated State</u> <u>Tax Revenues</u>	<u>Non Tax</u> <u>Revenues</u>	<u>State Tax</u> <u>Revenue Not</u> <u>Dedicated by the</u> <u>Constitution</u>
B. Source of Funding - General Revenue Related				
1. Occupation Taxes	\$1,877,986,086	\$1,877,986,086	\$0	\$0
2. Motor Fuel Taxes	1,644,038,732	1,611,795,208	-	32,243,524
3. Education Revenues	3,160,956,692	-	3,160,956,692	-
4. Insurance Maintenance Tax	248,900,286	-	-	248,900,286
5. Hotel Tax	58,962,036	-	-	58,962,036
6. Sporting Good Sales Tax	163,424,111	-	-	163,424,111
7. Beginning General Revenue Balance	3,000,000,000	-	316,467,739	2,683,532,261
8. Appropriations from Other Revenue	71,731,072,662	-	8,088,688,062	63,642,384,600
	-	-	-	-
SUBTOTAL(General Revenue Related)	<u>\$81,885,340,605</u>	<u>\$3,489,781,294</u>	<u>\$11,566,112,494</u>	<u>\$66,829,446,818</u>
II. Appropriations from Funds Outside of GR				
1. Account 0009 – Game, Fish, and Water Safety	\$221,345,496	-	\$ 217,844,436	\$3,501,060
2. Account 0036 – Texas Department of Insurance Operating	120,647,241	-	115,758,022	4,889,219
3. Account 0304 – Property Tax Relief	4,781,922,074	-	63,048,656	4,718,873,419
4. Account 5066 – Rural Volunteer Fire Department Insurance	2,000,000	-	-	2,000,000
5. Account 5071 – Emissions Reduction Plan	234,869,740	-	150,326,658	84,543,082
6. Account 5144 - Physician Education Loan Repayment Program	22,000,000	-	-	21,972,315
	-	-	-	-
GRAND TOTAL	<u>\$87,268,125,156</u>	<u>\$3,489,781,294</u>	<u>\$12,113,090,265</u>	<u>\$71,665,225,913</u>

TABLE 7
CALCULATION OF "ALL OTHER LINE ITEMS"
FOR THE 2010-11 BIENNIUM

	<u>2010</u>	<u>2011</u>	<u>2010-11</u> <u>Biennium</u>
General Revenue Funds "Recap" Amount	\$36,058,172,833	\$44,555,996,189	\$80,614,169,022
Less "Estimated to Be" Items:			
Office of the Attorney General	82,433,891	113,227,777	195,661,668
B.1.1. Strategy: Child Support Enforcement (SB1, Article I-5)			
Fiscal Programs - Comptroller of Public Accounts	5,000,000	1,000,000	6,000,000
A.1.1. Strategy: Voter Registration (SB1, Article I-21)			
Fiscal Programs - Comptroller of Public Accounts	2,970,000	2,970,000	5,940,000
A.1.2. Strategy: Miscellaneous Claims (SB1, Article I-21)			
Fiscal Programs - Comptroller of Public Accounts	128,318,000	132,937,000	261,255,000
A.1.4. Reimbursement - Beverage Tax (SB1, Article I-21)			
Fiscal Programs - Comptroller of Public Accounts	2,916,902	3,199,679	6,116,581
A.1.6. County Taxes - University Lands (SB1, Article I-21)			
Fiscal Programs - Comptroller of Public Accounts	127,000,000	129,000,000	256,000,000
A.1.8. Unclaimed Property (SB1, Article I-21)			
Funds Appropriated to the Comptroller for Social Security and BRP	502,233,890	514,013,530	1,016,247,420
A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion) (SB1, Article I-27)			
Employees Retirement System	951,344,439	1,015,307,422	1,966,651,861
A. Goal: Administer Retirement Program (GR Portion) & B. Goal: Provide Health Program (GR Portion) (SB1, Article I-31)			

	<u>2010</u>	<u>2011</u>	<u>2010-11 Biennium</u>
Department of State Health Services Vendor Drug Rebates—Public Health (SB1, Article II-47)	2,000,000	2,000,000	4,000,000
Department of State Health Services D.1.6. Strategy: Texasonline (SB1, Article II-50)	548,940	548,940	1,097,880
Health and Human Services Medicaid Program Income (SB1, Article II-79)	12,172,418	12,172,418	24,344,836
Health and Human Services Vendor Drug Rebates—Medicaid (SB1, Article II-79)	281,244,420	295,558,883	576,803,303
Health and Human Services Cost Sharing - Medicaid Clients (SB1, Article II-79)	9,342	2,368,611	2,377,953
Health and Human Services Vendor Drug Rebates-Supplemental Rebates (SB1, Article II-79)	47,689,294	49,990,754	97,680,048
Health and Human Services Premium Co-Payments, Low Income Children (SB1, Article II-79)	5,206,000	5,146,000	10,352,000
Health and Human Services Experience Rebates-CHIP (SB1, Article II-79)	3,942,608	4,071,000	8,013,608
Health and Human Services Vendor Drug Rebates-CHIP (SB1, Article II-79)	4,623,225	4,713,681	9,336,906
Texas Education Agency B.3.6. Strategy: Certification Exam Administration (SB1, Article III-4)	13,941,292	13,941,292	27,882,584
School For The Blind And Visually Impaired C.1.1. Strategy: Educ Prof Salary Increases (SB1, Article III-29)	144,267	295,747	440,014
School For The Deaf C.1.1. Strategy: Educ Prof Salary Increases (SB1, Article III-33)	180,827	370,696	551,523

	<u>2010</u>	<u>2011</u>	<u>2010-11 Biennium</u>
Teacher Retirement System A.1.1. Strategy: TRS - Public Education - (GR Portion) (SB1, Article III-36)	1,410,537,309	1,478,812,009	2,889,349,318
Teacher Retirement System A.1.2. Strategy: TRS - Higher Education Retirement (GR Portion) (SB1, Article III-36)	176,449,739	192,212,666	368,662,405
Teacher Retirement System A.2.1. Strategy: Retiree Health - Statutory Funds (GR Portion) (SB1, Article III-36)	255,336,675	268,103,509	523,440,184
Optional Retirement Program A.1.1. Strategy: Optional Retirement Program (GR Portion) (SB1, Article III-39)	123,831,106	127,546,040	251,377,146
Office Of Court Administration, Texas Judicial Council C.1.2. Strategy: Texasonline (SB1, Article IV-24)	10,488	13,576	24,064
Judiciary Section, Comptroller's Department A: Goal - D: Goal (GR Portion) (SB1, Article IV-31)	51,108,828	50,990,397	102,099,225
Department Of Public Safety E.4.1. Strategy: Texasonline (SB1, Article V-44)	631,000	631,000	1,262,000
Department Of Housing And Community Affairs E.1.4. Strategy: Texasonline (SB1, Article VII-2)	19,120	19,120	38,240
Texas Lottery Commission A.1.6. Strategy: Lottery Operator Contract (SB1, Article VII-9)	96,444,477	94,285,908	190,730,385
Texas Lottery Commission B.1.5. Strategy: Bingo Prize Fee Allocations (SB1, Article VII-9)	12,635,500	12,635,500	25,271,000
Board Of Chiropractic Examiners A.1.2. Strategy: Texasonline (SB1, Article VIII-5)	29,850	29,850	59,700

	<u>2010</u>	<u>2011</u>	<u>2010-11 Biennium</u>
Texas State Board Of Dental Examiners A.2.2. Strategy: Texasonline (SB1, Article VIII-7)	184,629	184,629	369,258
Funeral Service Commission A.1.2. Strategy: Texasonline (SB1, Article VIII-9)	39,000	39,000	78,000
Board Of Professional Geoscientists A.1.2. Strategy: Texasonline (SB1, Article VIII-11)	30,000	30,000	60,000
Department Of Insurance A.2.4. Strategy: Texasonline (SB1, Article VIII-18)	380,000	380,000	760,000
Board Of Professional Land Surveying A.1.3. Strategy: Examination (SB1, Article VIII-27)	12,150	12,150	24,300
Board Of Professional Land Surveying A.1.4. Strategy: Texasonline (SB1, Article VIII-27)	18,000	14,000	32,000
Department Of Licensing And Regulation A.1.5. Strategy: Texasonline (SB1, Article VIII-29)	331,200	331,200	662,400
Texas Medical Board A.1.2. Strategy: Texasonline (SB1, Article VIII-35)	316,841	316,841	633,682
Texas Board of Nursing A.1.2. Strategy: Texasonline (SB1, Article VIII-39)	325,000	325,000	650,000
Optometry Board A.1.2. Strategy: Texasonline (SB1, Article VIII-42)	16,750	16,750	33,500
Board Of Pharmacy A.1.2. Strategy: Texasonline (SB1, Article VIII-44)	217,345	221,785	439,130
Executive Council Of Physical Therapy & Occupational Therapy Examiners A.1.2. Strategy: Texasonline	131,175	131,175	262,350

	<u>2010</u>	<u>2011</u>	<u>2010-11 Biennium</u>
(SB1, Article VIII-47)			
Board Of Plumbing Examiners	155,000	155,000	310,000
A.1.2. Strategy: Texasonline (SB1, Article VIII-49)			
Board Of Podiatric Medical Examiners	4,130	4,130	8,260
A.1.2. Strategy: Texasonline (SB1, Article VIII-51)			
Board Of Examiners Of Psychologists	32,000	32,000	64,000
A.1.2. Strategy: Texasonline (SB1, Article VIII-53)			
Racing Commission	23,250	23,250	46,500
B.1.2. Strategy: Texasonline (SB1, Article VIII-55)			
Real Estate Commission	322,000	322,000	644,000
A.1.2. Strategy: Texasonline (SB1, Article VIII-60)			
Residential Construction Commission	350,000	-	350,000
A.1.2. Strategy: Texasonline (SB1, Article VIII-63)			
Residential Construction Commission	400,000	-	400,000
B.1.3. Strategy: Third-Party Inspections (SB1, Article VIII-64)			
Board Of Tax Professional Examiners	16,250	-	16,250
A.1.2. Strategy: Texasonline (SB1, Article VIII-69)			
Board Of Veterinary Medical Examiners	33,650	33,650	67,300
A.1.2. Strategy: Texasonline (SB1, Article VIII-77)			
Multiple Agencies: Earned Federal Funds	56,068,751	55,416,628	111,485,379
Sec. 6.26. Definition, Appropriation, Reporting and Audit of Earned Federal Funds (SB1, Article IX-32)			
Subtotal, Line Items Shown Separately	<u>\$4,360,360,968</u>	<u>\$4,586,102,193</u>	<u>\$8,946,463,161</u>
Total Other Line Items	<u>\$31,697,811,865</u>	<u>\$39,969,893,996</u>	<u>\$71,667,705,861</u>

TRD-201006238
John O'Brien
Director
Legislative Budget Board
Filed: November 3, 2010

Texas Military Facilities Commission

Obsolete Rules

The Office of the Secretary of State intends to remove the following rules from the Texas Administrative Code in 30 days:

Title 37. Administration

Part 12. Texas Military Facilities Commission

Chapter 375. Building Construction Administration

Chapter 377. Prevailing Wage Rate Determination

Chapter 378. Sale of Commission Property

Chapter 379. Administrative Rules

Senate Bill 1724 (80th Legislative Session, 2007) abolished the Texas Military Facilities Commission and transferred its functions to the Adjutant General's Department.

Government Code, §2002.058, directs the secretary of state to remove a state agency's rules from the Texas Administrative Code after the agency has been abolished. The text of the obsolete rules is available in the Texas Administrative Code on the secretary of state's website.

Once the rules are removed from TAC, the rule text will continue to be available on the secretary of state's website as part of the historical Texas Administrative Code database and in the Texas Register office at 1019 Brazos, Room 245, Austin, Texas.

TRD-201006129

Texas National Research Laboratory Commission

Obsolete Rules

The Office of the Secretary of State intends to remove the following rules from the Texas Administrative Code in 30 days:

Title 1. Administration

Part 14. Texas National Research Laboratory Commission

Chapter 300. Administration

Chapter 301. Public Information

Chapter 302. Relocation Assistance

Chapter 303. Procurement Rules

The Texas National Research Laboratory Commission ceased operations pursuant to provisions under House Bill 387, 80th Legislature. Repealed by Acts 2007, 80th Legislature, Chapter 609.

Government Code §2002.058, directs the secretary of state to remove a state agency's rules from the Texas Administrative Code after the agency has been abolished.

Once the rules are removed from TAC, the rule text will continue to be available on the Secretary of State Internet site as part of the historical Texas Administrative Code database, and in the Texas Register office at 1019 Brazos, Room 245, Austin, Texas.

TRD-201006137

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 October 26, 2010, to amend 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 Charter Communications VI, LLC d/b/a Charter Communications to Amend its State-Issued Certificate of Franchise Authority, Project Number 38846 before the Public Utility Commission of Texas.

The requested amendment is to remove from its service area footprint the municipalities of Atlanta, Carthage, Colorado City, Fulton, Hallsville, Jefferson, Levelland, Port Aransas, Portland, Rockport, Sinton, and Slaton; and the unincorporated portions of Aransas County, Cass County, Cochran County, Harrison County, Hockley County, Lamb County Lubbock County, Marion County, Mitchell County, Nueces County, and San Patricio County.

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 38846.

TRD-201006204
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 1, 2010

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 27, 2010, to amend 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 to Amend its State-Issued Certificate of Franchise Authority, Project Number 38850 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city of The Colony, 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 38850.

TRD-201006205
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 1, 2010

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 1, 2010, Cypress Communications Operating Company, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60477. Applicant seeks approval to reflect a change in ownership/control wherein Applicant will be transferred from its existing ultimate parent, TechInvest Holding Company, Inc. to Broadvox Holding Company, LLC.

The Application: Application of Cypress Communications Operating Company, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 38863.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 19, 2010. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38863.

TRD-201006227
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 2, 2010



Notice of Application for Amendment to the Designation of Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 27, 2010, to amend the designation as an eligible telecommunications carrier (ETC) pursuant to 47 United States Code §214(c) and P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of True Wireless, LLC for Amendment to its Eligible Telecommunications Carrier Designation, Docket Number 38852.

The Application: True Wireless requests an amendment to its ETC designation to include all the portions of the State of Texas that are served by GTE SW Verizon-Texas, GTE-SW d/b/a Verizon SW Inc. - Tx (Contel) and Southwestern Bell Telephone Co. d/b/a AT&T Texas, which are non-rural incumbent local exchange carriers. The territories are listed in Exhibit A of the application. True Wireless will not serve areas that are within the service territory of rural incumbent local exchange carriers. True Wireless seeks to continue to be designated as an ETC solely for Lifeline and Link-up support. True Wireless does not want or seek any high-cost federal universal service fund support.

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 November 24, 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 38852.

TRD-201006206
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 1, 2010



Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application for sale, transfer, or affiliation filed with the Public Utility Commission of Texas on October 21, 2010, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.154 and §39.108 (Vernon 2007 & Supp. 2010) (PURA).

Docket Style and Number: Application of Bosque Power Company, LLC Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 38834.

The Application: On October 21, 2010, Bosque Power Company LLC (Applicant) filed an application seeking approval of Applicant's proposed affiliation with another Texas power generation company relating to the bankruptcy plan confirmed by the United States Bankruptcy Court for the Western District of Texas on October 7, 2010 in *Bosque Power Company, LLC, et.al.*, Case No. 10-60348-rbk. Following approval of the application, Bosque Power Partners, LLC will be owned by a group of lenders referred to as the Prepetition Senior Lenders in the bankruptcy plan and will also be an affiliate of NextEra Resources, LLC (NextEra Resources).

Applicant is required to obtain commission approval before becoming affiliated with NextEra Resources if the electricity to be offered for sale in a power region in Texas will exceed 1% of the total electricity for sale in the Electric Reliability Council of Texas (ERCOT) power region if the application is approved. The commission shall approve the application unless the commission finds that it results in a violation of PURA §39.154. Under §39.154, a power generation company may not own and control more than 20% of the installed generation capacity located in, or capable of delivering electricity to a power region in Texas.

The Bosque Power Plant does not exceed the threshold level of 1% specified in PURA §39.158. However, one of the Prepetition Senior Lenders, NextEra Resources, owns and controls 3,126.8 MW of operational generation facilities located in or capable of delivering electricity to ERCOT power region. The combined installed capacity of NextEra Resources' ERCOT generation facilities is 3.5% of the total installed generation capacity in ERCOT. NextEra Resources also owns and controls 10,907 MW of operational generation facilities located in other states but such capacity is not capable of delivering electricity to the ERCOT power region. Applicant has stipulated that the total installed capacity for a power region within Texas will be less than 20%.

Persons with questions about the transaction may contact Applicant at (201) 587-7139. Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477 by December 3, 2010. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 38834.

TRD-201006225
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 2, 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 October 21, 2010, for a ser-

vice 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 CNS Networking Solutions, LLC for a Service Provider Certificate of Operating Authority, Docket Number 38835.

Applicant intends to provide data only - facilities-based, resale telecommunications services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than November 19, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 38835.

TRD-201006207
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 1, 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 October 29, 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 Crexendo Business Solutions, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 38857.

Applicant intends to provide data, facilities-based/UNE and resale telecommunications services.

Applicant's requested SPCOA geographic area includes those areas currently served by AT&T Texas, Verizon Southwest, and CenturyLink.

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 November 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 38857.

TRD-201006226
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 2, 2010



(Editor's Note: The Public Utility Commission of Texas submitted the following notice for publication in the October 29, 2010, issue of the Texas Register. Although it was posted in the searchable on-line database, it was omitted from the weekly issue.)

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 October 15, 2010, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of five (5) thousand-blocks of numbers on behalf of its customer, Weatherford International, in the 713 NPA, in the Houston rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources for Houston Rate Center, Docket Number 38818.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas 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 November 5, 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 38818.

TRD-201005998
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 19, 2010



Texas Residential Construction Commission

Obsolete Rules

The Office of the Secretary of State intends to remove the following rules from the Texas Administrative Code in 30 days:

Title 10. Community Development

Part 7. Texas Residential Construction Commission

Chapter 300. Administration

Chapter 301. General Provisions

Chapter 303. Registration

Chapter 304. Warranties and Building and Performance Standards

Chapter 305. Practices and Procedures for Hearings and Disciplinary Actions

Chapter 306. Complaints

Chapter 307. Inspections of Homes in Areas Without Municipal Inspections

Chapter 313. State-Sponsored Inspection and Dispute Resolution Process (SIRP)

Chapter 318. Residential Construction Arbitration

The Texas Residential Construction Commission closed September 1, 2010 (pursuant to provisions of §325.017 of the Government Code).

Government Code, §2002.058, directs the secretary of state to remove a state agency's rules from the Texas Administrative Code after the agency has been abolished. The text of the obsolete rules is available in the Texas Administrative Code on the secretary of state's website.

Once the rules are removed from TAC, the rule text will continue to be available on the secretary of state's website as part of the historical

Texas Administrative Code database and in the Texas Register office at 1019 Brazos, Room 245, Austin, Texas.

TRD-201006128



Telecommunications Infrastructure Fund Board

Obsolete Rules

The Office of the Secretary of State intends to remove the following rules from the Texas Administrative Code in 30 days:

Title 1. Administration

Part 18. Telecommunications Infrastructure Fund Board

Chapter 471. Operating Rules of the Telecommunications Infrastructure Fund Board

House Bill 735 (80th Legislative Session, 2007) repealed the Utilities Code, Chapter 57, Subchapter C, the authorizing statute for the Telecommunications Infrastructure Fund Board. The repeal effectively abolished the board and made its rules under 1 TAC Chapter 471 obsolete.

Government Code, §2002.058, directs the secretary of state to remove a state agency's rules from the Texas Administrative Code after the agency has been abolished. The text of the obsolete rules is available in the Texas Administrative Code on the secretary of state's website.

Once the rules are removed from TAC, the rule text will continue to be available on the secretary of state's website as part of the historical Texas Administrative Code database and in the Texas Register office at 1019 Brazos, Room 245, Austin, Texas.

TRD-201006123



Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The Town of Addison, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: Town of Addison Addison Municipal Airport. TxDOT CSJ No. 1118ADDON. Scope: Feasibility and Equivalency of Runway Safety Area Improvements and Engineered Material Arresting System (EMAS), and Runway Safety Area Determination.

There is no HUB goal. TxDOT Project Manager is Daniel Benson.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning 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. 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 seven 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-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Six completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 7, 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 and one local government member. 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. The criteria for evaluating consultants for airport planning projects can be found at <http://www.txdot.gov/business/projects/aviation.htm>. 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, or Daniel Benson, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201006208

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: November 1, 2010



Aviation Division - Request for Proposal for Professional Engineering Services

The City of Sonora, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Sonora Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Sonora. TxDOT CSJ No.: 1107SONOR.

Repair apron; install culvert under parallel taxiway; drainage improvements along runway and ditch along west property line; enlarge four downstream culverts along I-10 frontage road; replace/relocate fueling station; replace rotating beacon and tower; and install lighted windcone and segmented circle.

The HUB goal for the current project is 12%. TxDOT Project Manager is Ed Mayle.

Future scope work items for engineering/design services within the next five years may include the following:

1. Engineering/design for apron and runway
2. Overlay Apron

3. Overlay and mark Runway 18-36
4. Construct paved shoulders
5. Overlay and mark north parallel Taxiway
6. Overlay and mark stub Taxiway
7. Overlay and mark south Taxiway

The City of Sonora reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Sonora Municipal Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

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. 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 seven 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.

Please note:

Five completed, unfolded copies of 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 December 14, 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 Becky Vick.

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. The criteria for evaluation of engineering proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm>. 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.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Becky Vick, Grant Manager. For technical questions, please contact Ed Mayle, Project Manager.

TRD-201006239

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 3, 2010



Aviation Division - Request for Proposal for Professional Engineering Services

Reagan County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

Current Project: Reagan County. TxDOT CSJ No.: 1107BGLKE.

Rehabilitate and mark Runway 16-34; rehabilitate taxiway apron and hangar aprons; rehabilitate and mark stub taxiway A, hangar access taxiway; rehabilitate stub taxiway; mark taxiways; replace/upgrade lighted windcone and segmented circle; install 20 ft. security gate/controlled access; install game fencing; and clearing and grubbing.

The HUB goal is 6%. TxDOT Project Manager is Paul Slusser.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Reagan County Airport."

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. 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 seven 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.

Please note:

Five completed, unfolded copies of 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 December 14, 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 Becky Vick.

The consultant selection committee will be composed of local government 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. The criteria for evaluation of engineering proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selec-

tion 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.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Becky Vick, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201006240

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: November 3, 2010



Aviation Division - Request for Proposal for Professional Engineering Services

Orange County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: Orange County, Orange County Airport. TxDOT CSJ No.1120ORANG. Scope: Prepare an Airport Development Plan which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Development Plan should be tailored to the individual needs of the airport.

There is no HUB goal. TxDOT Project Manager is Josephine Jarrell.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning 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, URL address <http://www.dot.state.tx.us/avn/avn551.doc>. The form may not be altered in any way. 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 seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. 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-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is an MS Word Template.

Please note:

Five completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 7, 2010 at 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 Sheri Quinlan, Grant Manager.

The consultant selection committee will be composed of Aviation Division staff members with one local government member. The final selection by the committee will generally be made following the com-

pletion of review of proposals. The committee will review all proposals and rate and rank each. You may review the criteria at <http://www.tx-dot.gov/business/projects/aviation.htm>. 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 Sheri Quinlan, Grant Manager, or Josephine Jarrell, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201006241

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: November 3, 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 groundwater related studies for three separate projects. We expect to get separate Statements of Qualifications specific for each study area. The projects should take no more than two years to complete. All three projects will use the existing structural framework from the groundwater availability models combined with completed structural framework projects for non-modeled minor aquifers for each of the study areas to develop three-dimensional maps compatible with EVS or MVS software. Interpretative maps of various geochemical analyses to better conceptualize the groundwater flow shall then be processed into the approved and reviewed composite three-dimensional framework for each of the following study areas:

1. Groundwater management areas 3 and 7 including the Capitan Reef Complex, Dockum, Edwards-Trinity (Plateau), Ellenburger-San Saba, Hickory, Igneous, Lipan, Marble Falls, Ogallala, Pecos Valley, Rustler, and Trinity aquifers and any other aquifers relevant to the conceptual model for a total cost not to exceed \$455,000;
2. Groundwater management areas 11, 12, and 13 including the Brazos River Alluvium, Carrizo-Wilcox, Queen City, Sparta, and Yegua-Jackson aquifers and any other aquifers relevant to the conceptual model for a total cost not to exceed \$665,000; and
3. Groundwater management areas 14, 15, and 16 including the Brazos River Alluvium, and Gulf Coast (combined Chicot/Evangeline, Burkeville Confining unit, and Jasper/Catahoula combined) aquifers and any other aquifers relevant to the conceptual model for a total cost not to exceed \$400,000.

Maps of the groundwater management areas and associated aquifers are located at the following website: http://www.twdb.state.tx.us/mapping/maps/jpg/aqu_maj_gma_24x24.jpg and http://www.twdb.state.tx.us/mapping/maps/jpg/aqu_min_gma_24x24.jpg. 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) some supporting material.

Background

Groundwater availability models were an outgrowth of the regional water planning process created by Senate Bill 1, 75th Legislative Session. They were developed or obtained by the TWDB in response to groundwater conservation district and regional water planning group needs for better scientific tools to assist them in their management and planning efforts. Because of the demonstrated value of these models, in 2001 the Texas Legislature mandated that the TWDB obtain or develop groundwater availability models for all major and minor aquifers in Texas in coordination with groundwater conservation districts and regional water planning groups (Texas Water Code, §16.012). When House Bill 1763, 79th Legislative Session, became effective on September 1, 2005, groundwater availability models became an even more important tool in managing the state's groundwater resources. This law mandates that groundwater conservation districts and regional water planning groups use values of managed available groundwater, based on the desired future conditions of aquifers determined for the 16 groundwater management areas, in their management and regional water plans. Groundwater availability models have been and will continue to be used to estimate the managed available groundwater for each aquifer for each groundwater conservation district, as appropriate and applicable.

Since House Bill 1763 (79th Legislative Session) subtly changed the purpose of the groundwater availability modeling program, we are now working on combining existing models and adding additional layers, if needed, to represent all aquifers within each groundwater management area in Texas. In order to facilitate the development of these more comprehensive groundwater flow models, understanding the dynamics of the groundwater flow system, especially the relationship between the aquifers, is important.

Description of Research Objectives

The projects will be concentrated in three different study areas but will have the same basic goals and deliverables. We expect to get a separate Statement of Qualifications for each study area. The projects will use existing structural framework data from the groundwater availability models combined with completed framework projects for non-modeled minor aquifers for each of the study areas to develop three-dimensional maps showing the tops and bottoms of each aquifer. These three-dimensional maps will be submitted electronically to TWDB for review no later than June 30, 2011, in an agreed upon electronic format. Aqueous geochemical and isotopic data are commonly used to help refine conceptual models of groundwater flow; therefore, the approved three-dimensional framework will include interpretative data showing the results of various aqueous geochemical (inorganics) and isotopic data from existing sources and also collected specifically for this project. At a minimum there should be at least one sampling suite, per county and aquifer, unless negotiated otherwise. The objective of this project and the three dimensional interpretative maps are to confirm, refine, and/or modify the conceptual model of groundwater flow within each aquifer and the possible interaction between aquifers for each of the study areas.

The deliverables from these projects will then be used to constrain and develop regional scale groundwater availability models. Draft and final deliverables due at the end of the study period shall include:

1. Electronic files of sampling locations and sampling analysis that can be reviewed and imported directly and seamlessly into the TWDB Groundwater Database;
2. Hard copies of all collected lab results;
3. A report documenting the above (hard copy and electronic versions in both Microsoft Word 2007 format and in Adobe Acrobat 8.0 PDF compatible format);

4. EVS and/or MVS compatible files for reviewing the data three dimensionally.

The following issues need to be addressed in each Statements of Qualifications:

1. How this project is related to the understanding of conceptual groundwater models;
2. Approach for field data collection and analyses, noting that TWDB needs to pre-approve selected labs and sampling protocols, and explanation of what isotopes and aqueous geochemical samples will be collected, why, and where;
3. Experience and knowledge with TWDB groundwater database including compatibility with TWDB groundwater database for analytical results, sampling well locations, well depths, and screening information;
4. Approach interpreting geochemical data;
5. Experience and approach for using three dimensional tools to assess groundwater flow dynamics;
6. Approach for organizing and presenting information.

In addition, we expect potential contractors to indicate their abilities in:

1. general hydrogeology,
2. hydrogeology of the modeled aquifer,
3. geochemical analyses (inorganic and isotopic),
4. the use of three-dimensional tools for visualization,
5. technology transfer,
6. producing high-quality reports, and
7. meeting deadlines.

Monthly progress reports must be submitted to the TWDB outlining progress of the project. Project invoices cannot be processed without detailed descriptions of the progress made by 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.

At a minimum, TWDB staff expects to meet with the project team at the beginning of the project and in July 2011 after delivery of the composite three-dimensional framework. A formal talk discussing the results shall be presented to TWDB staff at the end of the project after the delivery of the draft deliverables. The Statements of Qualifications shall not be more than 15 pages in length, excluding qualifications and experience of project staff and the Historically Underutilized Business plan.

Description of Funding Consideration

Up to \$1,520,000 has been identified for water research assistance from the Water Assistance Fund and General Revenue for research on these three projects. Following the receipt and evaluation of all Statements of Qualifications, the TWDB may adjust the amount of funding initially authorized. Oral presentations may be required as part of qualification review. However, an 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 Statements of Qualifications, including the required attachments, must be filed with the TWDB prior to 12:00 noon, Tuesday, December 14, 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. Cindy Ridgeway at (512) 936-2386.

TRD-201006219
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: November 2, 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)