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*Akshay Patel
12th Grade*

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

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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:
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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>.)

Requests for Opinions

RQ-0948-GA

Requestor:

The Honorable Gail Lowe
Chair, State Board of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Re: Construction of section 7.103(c), Education Code, regarding the eligibility of a registered lobbyist for membership of the State Board of Education (RQ-0948-GA)

Briefs requested by April 8, 2011

RQ-0949-GA

Requestor:

The Honorable Phil Garrett
Palo Pinto County Attorney
Post Office Box 190
Palo Pinto, Texas 76484

Re: Whether a motor vehicle with a diesel turbine engine is required to be equipped with a muffler (RQ-0949-GA)

Briefs requested by April 11, 2011

RQ-0950-GA

Requestor:

The Honorable Dan W. Heard
Calhoun County District Attorney
Post Office Box 1001
Port Lavaca, Texas 77979

Whether a school district chief of police may be compensated for service on a city council (RQ-0950-GA)

Briefs requested by April 12, 2011

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

TRD-201101074

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: March 16, 2011



Opinions

Opinion No. GA-0848

Ms. Gail Lowe, Chair
State Board of Education

1701 North Congress Avenue
Austin, Texas 78701-1494

Re: Whether the State Board of Education may contract to pay attorney fees out of the corpus of the Permanent School Fund without an appropriation specifically for that purpose (RQ-0920-GA)

S U M M A R Y

Article VII, section 5 of the Texas Constitution does not authorize the State Board of Education to utilize funds from the Permanent School Fund to pay attorney fees without an appropriation for that purpose by the Legislature. To the extent that the Board may enter into a contingency fee contract for legal services, it must comply with chapter 2254, subchapter C of the Government Code.

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

TRD-201101075

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: March 16, 2011



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 355. REIMBURSEMENT RATES

SUBCHAPTER M. MISCELLANEOUS MEDICAID PROGRAMS

DIVISION 3. MEDICAID TARGETED CASE MANAGEMENT PROGRAM

1 TAC §355.9041

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

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.9041, concerning Reimbursement for Services.

Background and Justification

The repeal of this rule is proposed because the Centers for Medicare and Medicaid Services (CMS) changed its definition of Medicaid targeted case management, and the case management services delivered by the Department of Family and Protective Services (DFPS) no longer meet this definition. CMS stated in a written directive that child protective services are the direct services of State child welfare programs and are not Medicaid case management services. CMS further stated that these activities performed by child welfare/child protective services are separate from the Medicaid program and that Medicaid case management services must not be used to fund the services of State child welfare/child protective services workers. This rule applies only to services delivered by DFPS employees. The repeal will delete an obsolete rule for a Medicaid service that is no longer in effect.

Section-by-Section Summary

The repeal removes an obsolete rule for Medicaid targeted case management services that are no longer being claimed for reimbursement.

Fiscal Note

Cindy Brown, Chief Financial Officer for DFPS, has determined that, for the first five years the repeal is in effect, there is no fiscal impact to costs or revenues of state or local governments. The proposed rule was repealed because the State ceased federal claiming for this targeted case management service effective June 30, 2008 to comply with direction from CMS.

Small Business and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed repeal, since this rule applies only to services provided by state employees. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated effect on local employment in geographic areas affected by this repeal.

Public Benefit

Carolyn Pratt has also determined that for each year of the first five years the proposed repeal is in effect, the public will benefit from adoption of the repeal by having an obsolete rule removed from HHSC's rule base.

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 James Jenkins in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC H-400, Austin, TX 78708-5200; by fax to (512) 491-2865; or by e-mail at james.jenkins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

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

The repeal 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.

§355.9041. *Reimbursement for Services.*

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

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101019

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: April 24, 2011

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



TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.3

The Texas Animal Health Commission (Commission) proposes amendments to §40.3, concerning Herd Status Plans for Cervidae.

This proposal will assess a fee when Commission personnel provide the service of verifying the annual herd inventory as required by the Chronic Wasting Disease (CWD) Monitoring Program.

The Commission currently provides a voluntary herd monitored status program for species that are susceptible to CWD. Currently, all breeders of white-tailed deer, through the direction of the Texas Parks and Wildlife Department (TPWD), participate in a CWD Monitoring program through either TPWD or the Commission. Elk are encouraged to participate as part of the movement authorization requirements. Those that participate in the Commission's Monitored program are required to verify annually their herd inventory. That requirement is provided for in §40.3(3) and the requirement states that "[a]n annual inventory in participating herds shall be verified by a TAHC, USDA or Accredited veterinarian."

There are currently more than 300 herds enrolled in the Commission's monitoring program. For a large majority of those herds, the Commission currently provides the service of herd inventory verification. For those that choose to use the services of their Accredited Veterinarian, the herd owner pays the cost for those services. When the Commission performs the services without assessing a fee, we not only undercut the competitiveness of those private accredited veterinarians, we perform a task that costs the agency an uncompensated expense which is difficult to provide in these dire economic times.

FISCAL NOTE

Dr. Matt Cochran D.V.M, Assistant Executive Director for Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rule. This rule

serves to fund previously unfunded programmatic activity, but it will increase the administrative workload on the Commission's Financial Services department and other administrative personnel involved in fee collection and processing. The Commission estimates a possible decrease in program participation due to a change from free services to fee-for-services. That said, annual revenue of \$47,875 is estimated based on 192 inspections at \$250/inspection. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on micro businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact because the program establishes a fee at a level close to that charged for the same services provided by a private veterinary practitioner. To date, the agency had been providing a free service that cannot be sustained and this allows the agency to cover those expenses.

PUBLIC BENEFIT NOTE

Dr. Cochran has also 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 that voluntary Commission CWD program enrollees will not contribute to or maintain CWD in their herds. The level of surveillance built into the CWD program serves to protect all susceptible species in Texas, and related industries and ecological systems. Though there will be a reasonable annual inventory service fee levied on all participants who choose Commission personnel for their inventory, the resulting ability to engage in interstate trade and perform verified surveillance outweigh the cost.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The Commission has determined that the proposed governmental action will not affect private real property. This proposed rule is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Dolores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Under §161.060, "[t]he commission may charge a fee, as provided by commission rule, for an inspection made by the commission." During the last Texas Legislative Session, House Bill 3300 passed and was enacted into law to become effective on September 1, 2009. The legislation amended Chapter 161 of the Texas Agriculture Code by adding §161.0541, entitled Elk Disease Surveillance Program. The section provides that the Commission by rule may establish a disease surveillance program for elk. Rules adopted under this section must: (1) require each

person who moves elk in this state to have elk tested for CWD or other diseases as determined by the Commission; (2) be designed to protect the health of the elk population in this state; and (3) include provisions for testing, identification, transportation, and inspection under the disease surveillance program. The section also provides that a person commits an offense if the person knowingly violates a rule adopted by the Commission under this section. Also, an offense under Subsection (c) is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted of an offense under that subsection, in which event the offense is a Class B misdemeanor.

The Commission is also vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061. As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission, by §161.054, may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal, which is under §161.002.

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

§40.3. Herd Status Plans for Cervidae.

Complete Monitored Herd.

- (1) Participating herds must have adequate perimeter fencing to prevent ingress and egress of cervids.
- (2) Surveillance in participating herds is accomplished by collection and submission of appropriate samples ~~from~~ ~~from~~ all cases of mortality in animals over 16 months of age. Exemptions are provided for animals consigned to commercial slaughter operations with state or federal meat inspection.
- (3) An annual inventory in participating herds shall be verified by a TAHC, USDA or Accredited veterinarian. If requested by a producer to verify the inventory, the Commission hereby assesses a fee of \$100.00 per hour. All animals over one year of age shall be identified with an official eartag or other approved identification device. All animals less than one year of age shall be officially identified on a change of ownership.
- (4) Herd status designation shall be assigned on the basis of the number of years of participation provided that CWD is not confirmed in the herd:
 - (A) Level A - One full year of participation.
 - (B) Level B - Two to three years of participation.
 - (C) Level C - Four to five years of participation.
 - (D) Level D - Six years or more of participation.

(5) Additions to Complete Monitored Herd.

(A) Additions may originate from herds of equal or higher status with no change in the status of the receiving herd.

(B) Additions may originate from herds of lower status with the receiving herd acquiring the lower status of the herd(s) involved.

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

Filed with the Office of the Secretary of State on March 8, 2011.

TRD-201100938

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 719-0724



CHAPTER 49. EQUINE

4 TAC §49.5

The Texas Animal Health Commission (Commission) proposes amendments to §49.5, concerning Piroplasmosis: Identification of Infected Equine.

This proposal will define an official piroplasmosis test and require a standardized test form for piroplasmosis submission. The rule is also amended so that positive animals are restricted and a test requirement for equine entering into a racing facility is added.

In October 2009, equine piroplasmosis was disclosed on a premise in south Texas. Equine piroplasmosis is a tick-borne protozoal infection of horses. At least one species of tick, *Amblyomma cajennense*, has proven capable of transmitting the blood parasite. This species of tick is endemic to South Texas and several other southern states. Also, the disease may be spread between horses by unsafe animal husbandry practices such as sharing needles or equipment that is contaminated with blood. This has brought about the disclosure that there are quite a few positive animals which are for the purpose of racing, either through sanctioned events or otherwise. While piroplasmosis can be a fatal disease, many horses may display vague signs of illness, such as fever, inappetance or jaundice. Several states have imposed interstate movement restrictions on horses from Texas.

Discussion is ongoing regarding the need to develop a control program. However, these positive equine can potentially expose any equine that unknowingly associates with the positive equine. The Commission already requires that these animals be positively identified and is adding requirements regarding the movement restrictions automatically evoked upon disclosure of a positive. The rule also requires that all test submissions be on a standardized test form. This ensures that all the necessary information is collected and allows for more efficient review for any user based on standardization.

Furthermore, in testing for positive animals the agency has discovered that there is a distinct group of positive horses that are classified in some way as race horses. Based on this realization the Commission believes that it is prudent to require that all

equine who participate in racing events have a negative piroplasm test in order to participate. This requirement is intended to ensure that the positive animals are disclosed as well as to be protective of those animals which participate.

FISCAL NOTE

Dr. Matt Cochran, D.V.M, Assistant Executive Director for Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact on the equine industry because the use of the test form will make test submittals easier on the practitioner through standardization and therefore, there is no need to do an EIS. Also, the purpose of the rule, by requiring a standardized test submission form, will make the testing process more efficient for both the veterinary practitioner as well as the equine owner by ensuring all the necessary information is collected and improve anyone's review of the form, and test results, by presenting the information in the same format. The requirement that all equine entering a racing facility have a negative test will ensure that there is a reduced risk of exposure to their horse or other horses. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Dr. Cochran has also 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 clear and concise regulations for identifying positive animals.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. This proposed rule is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting disease, and treatment, in accordance with 4 TAC §59.7, and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized by §161.041(b) to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Com-

mission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission, by §161.054, may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission. No other statutes, articles, or codes are affected by the amendments.

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

§49.5. *Piroplasmosis: Testing, Identification of Infected Equine.*

(a) Official Equine Piroplasmosis Test: A test for Equine Piroplasmosis applied and reported by a laboratory approved by the Commission. The sample must be collected by or under the direct supervision of an accredited veterinarian. A completed Equine Piroplasmosis Laboratory Test chart (Form 10-07) must be submitted with the sample, listing the description of the equine to include the following: age, breed, color, sex, animal's name, and all distinctive markings (i.e., color patterns, brands, tattoos, scars, or blemishes), and any RFID numbers applied to the animal. In the absence of any distinctive color markings or any form of visible permanent identification (brands, tattoos or scars), the animal must be identified by indicating the location of all hair whorls, vortices or cowlicks with an "X" on the illustration provided on the chart. In lieu of the manual illustration, digital photographs clearly showing the horse from the left side, right side, and full face may be incorporated in the chart. All charts must list owner's name, address, the animal's home premise and county, the name and address of the authorized individual collecting the test sample, and the laboratory and individual conducting the test. The Piroplasmosis test document shall list one horse only.

(b) Reactor. A reactor is any equine which discloses a positive reaction for Piroplasmosis on a Complement Fixation (CF) or competitive Enzyme Linked Immunosorbent Assay (cELISA) applied at a laboratory approved by the Commission. The individual collecting the test sample must notify the animal's owner of the quarantine within 48 hours after receiving the results. All Piroplasmosis positive animals will be restricted. Retests may only be performed by a representative of the Commission.

(c) Official Identification of Equine Positive for Piroplasmosis. A reactor must be identified with one or both of the following methods as determined by the Commission:

(1) The reactor equine may be identified with a permanent mark as described herein or as approved by the Commission. If branded

the letter "P" will be applied by a representative of the Texas Animal Health Commission as a hot-iron brand or freeze-marking brand or a hoof brand. For a Freeze or Hot-Iron brand the "P" brand must be not less than two inches high and shall be applied to the left shoulder or left or right side of the neck of the reactor. For a hoof brand the "P" brand must be applied to the front right hoof and reapplied by a Commission representative as necessary to maintain visibility. Reactors must be identified within ten (10) days of the date the laboratory completes the test unless the equine is destroyed. Any equine destroyed prior to identification must be described in a written statement by the accredited veterinarian or other authorized personnel certifying to the destruction. This certification must be submitted to the Texas Animal Health Commission promptly; or

(2) Using official identification or identification device or a unique tattoo approved by the Commission that provides unique identification for each individual animal.

(d) Equine entering a racetrack facility must have a negative Piroplasmosis test (*Theileria equi*) within the past 12 months. A racetrack facility is grounds used to conduct organized horse racing.

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

Filed with the Office of the Secretary of State on March 8, 2011.

TRD-201100939

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 719-0724



CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.3

The Texas Animal Health Commission (Commission) proposes amendments to §51.3, concerning Exceptions.

This proposal will clarify existing entry requirements for equine entering Texas from out of state on an equine passport.

The Commission adds a new paragraph to §51.3(a) which has exceptions for having an entry permit and a certificate of veterinary inspection. Equine may enter Texas for shows, fairs, exhibitions or assembly purposes when accompanied by a valid equine interstate passport or equine identification card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months. This is in support of an agreement by and between the state animal health regulatory agencies of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia and is accepted by all parties for the purpose of fulfilling the objectives and provisions of the Equine Interstate Event Permit program in those respective states and enhancing the coordination and cooperation between those states regarding the interstate transportation of equine.

FISCAL NOTE

Dr. Matt Cochran, D.V.M, Assistant Executive Director for Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no

additional fiscal implications for state or local government as a result of enforcing or administering the rule. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact on the equine industry because of the use of a standardized movement document for participating states and therefore, there is no need to do an EIS. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Dr. Cochran has also 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 streamlined regulation of equine infectious disease with respect to intra and interstate movement. The majority of facilitation will come from standardization of regulation between those participating states between which equidae are routinely moved.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. This proposed rule is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission, by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission, by §161.054, may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled

to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

Section 161.101 provides that the Commission may require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of specific diseases among livestock, exotic livestock, domestic fowl, or exotic fowl. No other statutes, articles, or codes are affected by the amendments.

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

§51.3. *Exceptions.*

(a) Exceptions for a certificate of veterinary inspection and entry permit.

(1) Cattle 18 months of age and over delivered directly from the farm of origin to slaughter;

(2) Beef breed cattle 18 months of age and over entering from other than a farm-of-origin may be moved to slaughter, or to an approved feedyard when accompanied by a VS 1-27 Form on which each animal is individually identified. Brucellosis test data shall be written on the VS 1-27 Form which must include the test date and results;

(3) Beef breed cattle 18 months of age and over delivered directly to a USDA specifically approved livestock market by the owner or consigned there and accompanied by a waybill;

(4) Beef breed steers, spayed heifers, beef breed cattle under 18 months of age, delivered to slaughter and accompanied by a waybill or to a livestock market by the owner or consigned there and accompanied by a waybill;

(5) Beef breed steers, spayed heifers and beef breed cattle under 18 months of age delivered to a feedlot for feeding for slaughter by the owner or consigned there and accompanied by a waybill;

(6) Swine and poultry delivered to slaughter by the owner or consigned there and accompanied by a waybill;

(7) Baby poultry which have not been fed or watered if from a national poultry improvement plan (NPIP) or equivalent hatchery, and accompanied by NPIP Form 9-3 or Animal and Plant Health Inspection Service (APHIS) Form 17-6, or have an approved "Commuter Poultry Flock Agreement" on file with the state of origin and the Texas Animal Health Commission;

(8) Beef breed steers, spayed heifers, and beef breed cattle under 18 months of age originating in New Mexico which are accompanied by a New Mexico official certificate of livestock inspection; ~~and~~

(9) Feral Swine being shipped directly to slaughter. Feral swine shall be shipped in a sealed vehicle accompanied by a 1-27 permit with the seal number noted on the permit also providing the number of head on the permit; ~~and~~[-]

(10) Equine when accompanied by a valid equine interstate passport or equine identification card and a completed VS Form 10-11

showing negative results to an official EIA test within the previous 6 months.

(b) Exceptions for a certificate of veterinary inspection. Equine may enter Texas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by a permit number issued by the Texas Animal Health Commission. Following release by the veterinarian, equidae must be returned immediately to the state of origin by the most direct route. Equine entering Texas for sale at a livestock market, may first be consigned directly to a veterinary hospital or clinic for issuance of the certificate of veterinary inspection, when accompanied by a prior entry permit issued by the Texas Animal Health Commission.

(c) Exceptions for an entry permit.

(1) Swine consigned from out-of-state directly to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under the Code of Federal Regulations, Title 9, ~~Part~~ §71.20;

(2) Swine that originate from an approved Swine Commuter Herd or that originate from a Pseudorabies Stage IV or V state or area and Brucellosis free state or area and are not vaccinated for pseudorabies;

(3) Poultry that originate from an approved Poultry Commuter Flock;

(4) Cattle that originate from an approved Cattle Commuter Herd;

(5) Equine accompanied by a valid equine interstate passport or equine ID card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months;

(6) Sheep and goats consigned from out-of-state; and

(7) Exotic fowl from out of state, except ratites.

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

Filed with the Office of the Secretary of State on March 8, 2011.

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Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 719-0724

CHAPTER 54. DOMESTIC AND EXOTIC FOWL REGISTRATION

4 TAC §54.4

The Texas Animal Health Commission (Commission) proposes amendments to §54.4, concerning Registration Fee.

This proposal will amend the fee schedule for registrants in the Commission's domestic and exotic fowl registration program. The Commission requires the registration of domestic and exotic fowl sellers, distributors, or transporters who do not participate in disease surveillance programs recognized by the Commission. The primary purpose of the program is to ensure that the various type of fowl being sold or transported throughout

this state do not pose a disease risk which could devastate the various Texas fowl industries.

Section 54.4 is entitled "Registration Fee" and provides the fees for registration utilizing a graduated fee structure for registrants depending on flock size. These fees were established with the inception of the fowl registration program in 2004 and have never been adjusted. However, based on the overall cost of the agency to manage the program there is a need to adjust those fees to more adequately support the program. The Commission is authorized through §161.0411 to set fees under this section in amounts that do not exceed the amounts necessary to enable the Commission to recover the costs of administering this program.

FISCAL NOTE

Dr. Matt Cochran D.V.M, Assistant Executive Director for Administration, Texas Animal Health Commission, has determined the fiscal implications for state or local government for the first five year period the rule is in effect. Section 161.0411 authorizes the Commission to set fees under this section in amounts that do not exceed the amounts necessary to enable the Commission to recover the costs of administering this section. The Commission proposes to institute a graduated fee structure for registrants depending on flock size, which also corresponds to disease risk. The annual registration fee for a seller shall be based on the maximum number of fowl at any one time, during the previous twelve (12) months, being owned or managed by the registrant.

Anticipated revenues for first five year period are estimated to be \$230,000. The first year's revenue is estimated to be \$46,000 and each year thereafter \$46,000. This represents an estimated revenue collection increase of \$9,000/year relative to the fee structure currently in place. Actual revenue will depend on the number of registrants within each graduated fee structure.

The use of a graduated fee also diminishes any type of adverse economic effect on small businesses or micro-businesses by relating the fee to the size of the flock. Also, under this chapter the Commission recognizes there is a cost associated with the fee, but there is also a cost for a similarly situated seller who is involved with a disease surveillance program recognized by the Commission. As such, the requirements do not create an adverse impact on a small businesses or micro-businesses for those who register and those under a disease surveillance program.

PUBLIC BENEFIT NOTE

Dr. Cochran has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated is that the various types of fowl activities required to register provide the Commission increased surveillance, reduced risk of disease spread, and improved disease traceability to facilitate eradication of a disease all which is more protective for the various fowl industries and the general public. The fee charge is intended to cover the cost of the Commission to provide the registrants a service.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. This proposed rule is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting disease, and treatment, in accordance with 4 TAC §59.7, and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Dolores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Section 161.0411 authorizes the Commission to register domestic and exotic fowl sellers, distributors, or transporters who do not participate in disease surveillance programs recognized by the Commission. Section 161.0411 also authorizes the Commission to set fees under this section in amounts that do not exceed the amounts necessary to enable the Commission to recover the costs of administering this section. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

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

§54.4. Registration Fee.

(a) The annual registration fee for a seller shall be based on the maximum number of fowl, during the previous twelve (12) months, being owned or managed by the registrant at any one time:

- (1) \$35.00 [~~\$25.00~~] for less than 100 fowl.
- (2) \$125.00 [~~\$100.00~~] for 100 to 499 fowl.
- (3) \$250.00 [~~\$200.00~~] for 500 through 999 fowl.
- (4) \$400.00 [~~\$350.00~~] for 1000 to 2,499 fowl.
- (5) \$600.00 [~~\$500.00~~] for 2,500 fowl or greater.

(6) \$600.00 [~~\$500.00~~] for any registrant whose flock does not reside in the state of Texas, except in cases where the out of state registrant [ean] provides to the Commission an affidavit certifying a verified maximum flock size, then the registration fee will be the same as the fee for Texas registrants with a corresponding flock size.

(b) The annual certificate of registration fee for a distributor or transporter of fowl shall be \$600.00. [~~\$500.00~~]

(c) The annual certificate of registration fee for a combination [fee for a] seller, distributor or transporter of fowl shall be \$800.00. [~~\$700.00~~]

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

Filed with the Office of the Secretary of State on March 8, 2011.

TRD-201100941

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 719-0724



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 February 3, 2011, 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 TCF 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. The proposed amendments to §255.7(f) more clearly describe the need to use information from the most recent decennial census data and add an additional option for scoring documentation in real estate and infrastructure projects. 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(e), (h), and (k) are made for purposes of correcting grammatical errors and clarification.

On October 7, 2010, the TDRA Board of Directors approved the first publication of this proposal for comment. The notice was published in the November 12, 2010, issue of the *Texas Register* for a 30-day comment period. By the close of the comment period, substantive comments on many of the proposed changes had been received. Because TDRA and TDA agreed with some of the comments but could not incorporate them into the rules without another round of publication for comment, TDRA is withdrawing the proposal and proposing this revised rule proposal for comment. The comments received during the comment period

ending December 12, 2010, have been reviewed and considered in this new proposal.

Howard G. Baldwin, Jr., 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. Baldwin 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 the proposed amendments are published 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 [ø] elimination of slum or blighted areas.

(1) - (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; and 4:1 for awards of \$750,100 to \$1,000,000; and 5:1 for awards of \$1,000,100 to \$1,500,000 [~~\$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; \$10,000 for awards of \$750,100 to \$1,000,000; and \$5,000 for awards of \$1,000,100 to \$1,500,000 [~~and \$10,000 for awards of \$750,001 to \$1,000,000~~]. These requirements do not apply to the main street program or the downtown revitalization program.

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

(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 ~~\$3.5~~ ~~[\$2]~~ million in total awards during the program year. Additionally, no more than ~~\$1.5~~ ~~[\$1]~~ million in jumbo awards will be approved in any round. The maximum amount for a jumbo award is ~~\$1.5~~ ~~[\$1]~~ 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) During the first half of the calendar year, TDA will allocate the available funds for the year, including no more than two (2) jumbo awards 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) - (d) (No change.)

(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) - (9) (No change.)

(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) (No change.)

(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 by 15% or more [of 17.7%].

(C) (No change.)

(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.

(E) Per Capita Income (maximum 5 points). Five points awarded to applicants that have a per capita income below the state per capita income from the most recent decennial census data [19,617].

(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 [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) Preferred/Primary jobs (maximum 20 points). Awarded if the jobs to be created and/or retained are or will be employed by a benefiting business whose primary North American Industrial Classification System (NAICS) code number falls into the categories identified in clauses (i) - (iii) of this subparagraph. This is based on the NAICS number reported on the business' Texas Workforce Commission (TWC) Quarterly Contribution Report, Form C-3, their IRS business tax return, documentation from the Texas Comptroller of Public Accounts containing the business's tax identification number, or other documentation from the TWC ~~[Texas Workforce Commission]~~. Foreign or start-up businesses that have not had a NAICS code number assigned to them by either the TWC or IRS, may submit alternative documentation from TWC to support their primary business activity (NAICS code) to be eligible for these points.

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

(B) (No change.)

(g) (No change.)

(h) Application process for the main street program. The application and selection procedures consist of the following steps:

(1) (No change.)

(2) Upon receipt of the applications, staff from the Texas Historical Commission (THC) may review applications, and TDA staff shall evaluate the applications based on the scoring criteria and rank [ranks] them in descending order.

(3) - (8) (No change.)

(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) (No change.)

(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. The TDA Commissioner makes the final decision. The application and selection procedures consist of the following steps:

(1) - (4) (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) Poverty (maximum 10 points). Awarded if the applicant's most recently available, decennial poverty rate for individuals is higher than the annual state rate for individuals, 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 by 15% or more [~~17.7%~~].

(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) (No change.)

(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) Per Capita Income (maximum 10 points). Awarded to cities that have a per capita income below the state per capita income from the most recent decennial census data [~~\$19,617~~].

(F) - (J) (No change.)

(m) (No change.)

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

Filed with the Office of the Secretary of State on March 14, 2011.

TRD-201101036

Howard G. Baldwin, Jr.

Executive Director

Texas Department of Rural Affairs

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 936-6734



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §8.1

The Texas State Library and Archives Commission proposes an amendment to 13 TAC §8.1(15), concerning the definition of non-profit library. The proposed revision would update references to the Texas Non-Profit Corporation Act to correct the legal citation. The provisions of Texas Non-Profit Corporation Act were repealed on January 1, 2010 and replaced by provisions of the Texas Nonprofit Corporation Law.

Beverly Shirley, Library Resource Sharing Division Director, has determined that for the first five years the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment as proposed.

Ms. Shirley has also determined that for each year of the first five years the amendment is in effect the public benefit will be a current and updated rule. There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the amendment as proposed.

Written comments on the amendment may be submitted to Beverly Shirley, Library Resource Sharing Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927; fax: (512) 936-2306.

The amendment is proposed under Government Code §441.225(b), which authorizes the commission to adopt rules to govern the operation of the consortium.

The amendment affects Government Code, §§441.221 - 441.230.

§8.1. *Definitions.*

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

(1) - (14) (No change.)

(15) Nonprofit library--A library not already qualified for consortium membership by virtue of being a public library, library of clinical medicine, or library affiliated with an institution of higher education that is:

(A) Established as a nonprofit corporation under the Texas Nonprofit Corporation Law (Texas Business Organizations Code §22.001 et seq.) [~~Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)~~]; or

(B) An administrative subdivision of a nonprofit corporation established under the Texas Nonprofit Corporation Law (Texas Business Organizations Code §22.001 et seq.) [~~Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)~~]; or

(C) - (D) (No change.)

(16) (No change.)

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

Filed with the Office of the Secretary of State on March 9, 2011.

TRD-201100981

Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

Earliest possible date of adoption: April 24, 2011

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



TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.2

The Texas State Board of Pharmacy proposes amendments to §281.2, concerning Definitions. The proposed amendments, if adopted, define diversion of dangerous drugs.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will clarify the definition of diversion of dangerous drugs. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite

3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., May 2, 2011.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.2. Definitions.

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

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

(8) Diversion of dangerous drugs--An act or acts which result in the distribution of dangerous drugs from legitimate pharmaceutical or medical channels in violation of the Dangerous Drug Act or rules promulgated pursuant to the Dangerous Drug Act or rules relating to dangerous drugs promulgated pursuant to this Act.

(9) [(8)] Executive director/secretary--The secretary of the board and executive director of the agency.

(10) [(9)] License--The whole or part of any agency permit, certificate, approval, registration, or similar form of permission required by law.

(11) [(10)] Licensee--Any individual or person to whom the agency has issued any permit, certificate, approved registration, or similar form of permission authorized by law.

(12) [(11)] Licensing--The agency process relating to the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(13) [(12)] Official act--Any act performed by the board pursuant to a duty, right, or responsibility imposed or granted by law, rule, or regulation.

(14) [(13)] Person--An individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(15) [(14)] President--The president of the Texas State Board of Pharmacy.

(16) [(15)] Presiding Officer--The president of the Texas State Board of Pharmacy or, in the president's absence, the highest ranking officer present at a Board meeting.

(17) [(16)] Quorum--A majority of the members of the board appointed and serving on the board.

(18) [(17)] State Office of Administrative Hearings (SOAH)--The agency to which contested cases are referred by the Texas State Board of Pharmacy.

(19) [(18)] Sample--A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(20) [(19)] Texas Public Information Act--Government Code, Chapter 552.

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

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101010

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 305-8028



CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.33, §291.34

The Texas State Board of Pharmacy proposes amendments to §291.33, concerning Operational Standards, and §291.34, concerning Records. The proposed amendments to §291.33, if adopted, clarify requirements for maintaining a key or other means of accessing the prescription department during an emergency and correct beyond-use date requirements for patient med-paks. The proposed amendments to §291.34, if adopted, clarify the requirements for making alterations to prescription records following a dispensing error, change shall to must, and correct references.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure only authorized individuals are allowed to access the pharmacy during an emergency, proper beyond-use dating is on prescription labels for patient med-paks, and accurate records are maintained by the pharmacy when a dispensing error is made. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m. May 2, 2011.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.33. *Operational Standards.*

- (a) (No change.)
- (b) Environment.
 - (1) (No change.)
 - (2) Security.
 - (A) - (C) (No change.)

(D) Only persons designated either by name or by title including such titles as "relief" or "floater" pharmacist, in writing by the pharmacist-in-charge may unlock the prescription department except in emergency situations. An additional key to or instructions on accessing the prescription department may be maintained in a secure location outside the prescription department for use during an emergency or as designated by the pharmacist-in-charge [~~for entry by another pharmacist~~].

(E) (No change.)

(3) (No change.)

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

(h) Customized patient medication packages.

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

(3) Label.

(A) The patient med-pak shall bear a label stating:

(i) the name of the patient;

(ii) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(iii) the name, strength, physical description or identification, and total quantity of each drug product contained therein;

(iv) the directions for use and cautionary statements, if any, contained in the prescription drug order for each drug product contained therein;

(v) if applicable, a warning of the potential harmful effect of combining any form of alcoholic beverage with any drug product contained therein;

(vi) any storage instructions or cautionary statements required by the official compendia;

(vii) the name of the prescriber of each drug product;

~~[(viii) the date of preparation of the patient med-pak and the beyond-use date assigned to the patient med-pak (which such beyond-use date shall not be later than 60 days from the date of preparation);]~~

(viii) ~~[(ix)]~~ the name, address, and telephone number of the pharmacy;

(ix) ~~[(x)]~~ the initials or an identification code of the dispensing pharmacist;

(x) ~~[(xi)]~~ effective June 1, 2010, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(xi) ~~[(xii)]~~ effective January 1, 2011, either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(xii) [~~(xiii)~~] any other information, statements, or warnings required for any of the drug products contained therein.

(B) - (C) (No change.)

(4) - (8) (No change.)

(i) (No change.)

§291.34. *Records.*

(a) (No change.)

(b) Prescriptions.

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

(8) Records Relating to Dispensing Errors.

(A) For purposes of this subsection, a dispensing error is defined as one of the following actions:

(i) an action committed by a pharmacist or other pharmacy personnel that causes a patient or patient's agent to take possession of a dispensed prescription drug that was not prescribed for or intended to be given to the patient or patient's agent; or

(ii) an action committed by a pharmacist or other pharmacy personnel that causes the patient or patient's agent to take possession of a dispensed prescription drug and an individual subsequently discovers that the patient has received an incorrect drug product, which includes incorrect strength, incorrect dosage form, and/or incorrect directions for use.

(B) If a dispensing error occurs, the following is applicable.

(i) Original prescription drug orders:

(I) shall not be destroyed and must be maintained in accordance with subsection (a) of this section; and

(II) shall not be altered. Altering includes placing a label or any other item over any of the information on the prescription drug order (e.g., a dispensing tag or label that is affixed to back of a prescription drug order must not be affixed on top of another dispensing tag or label in such a manner as to obliterate the information relating to the error).

(ii) Prescription drug order records maintained in a data processing system:

(I) shall not be deleted and must be maintained in accordance with subsection (a) of this section;

(II) may be changed only in compliance with subsection (e)(2)(B) of this section; and

(III) if the error involved incorrect data entry into the pharmacy's data processing system, this record must be voided or cancelled in the data processing system, so that the incorrectly entered prescription drug order may not be dispensed.

(iii) If a pharmacist corrects the error and dispenses a corrected prescription drug order, the following is applicable.

(I) A new corrected original prescription drug order shall be created and assigned a new prescription number. This new prescription drug order shall contain a reference to the prescription number of the incorrectly dispensed prescription drug order except as described in subclause (II) of this clause.

(II) If the error involved a Schedule II-V controlled substance, the original prescription number must be maintained and the pharmacy shall correct the information submitted to the Texas

Department of Public Safety prescription monitoring program. Such notification shall be documented on the hard copy prescription.

(c) Patient medication records.

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

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained on-line. A [Effective January 1, 2009, a] patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) (No change.)

(d) Prescription drug order records maintained in a manual system.

(1) (No change.)

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, [effective January 1, 2009,] the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, which indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;

(III) date of each dispensing;

(IV) quantity dispensed at each dispensing;

(V) initials or identification code of the dispensing pharmacist;

(VI) [effective January 1, 2009,] initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III - V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

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

(6) Each [Effective January 1, 2009, each] time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) (No change.)

(2) Records of dispensing.

(A) (No change.)

(B) ~~Each [Effective January 1, 2009, each]~~ time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the information should be clearly documented on the hardcopy prescription.

(C) The data processing system shall have the capacity to produce a daily hard-copy printout of all original prescriptions dispensed and refilled. This hard-copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name;

(v) name and strength of the drug product actually dispensed; if a generic product [~~generic name~~], the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) [~~effective January 1, 2009,~~] initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via CRT display, the following shall also be included on the hard-copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) [~~effective January 1, 2009,~~] any changes made to a record of dispensing.

(D) - (K) (No change.)

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

(f) - (j) (No change.)

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

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101012

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 305-8028

◆ ◆ ◆
**SUBCHAPTER D. INSTITUTIONAL
PHARMACY (CLASS C)**

22 TAC §291.74

The Texas State Board of Pharmacy proposes amendments to §291.74, concerning Operational Standards. The proposed amendments to §291.74, if adopted, clarify requirements for pharmacy technicians and pharmacy technician trainees stocking automated medication supply systems.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure proper procedures are followed when pharmacy technicians/trainees are stocking automated medication supply systems. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., May 2, 2011.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.74. *Operational Standards.*

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

(j) Automated devices and systems.

(1) (No change.)

(2) Automated medication supply systems.

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

(D) Automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department (e.g., Pyxis). A pharmacy technician or pharmacy technician trainee may re-stock an automated medication supply system located outside of the pharmacy department with prescription drugs [~~other than compounded IV admixtures~~] provided:

(i) prior to distribution of the prescription drugs a pharmacist verifies that the prescription drugs pulled to stock the automated supply system match the list of prescription drugs generated by the automated medication supply system except as specified in §291.73(e)(2)(C)(ii) of this title; or[-];

(ii) all of the following occur:

(I) [~~(ii)~~] the prescription drugs to re-stock the system are labeled and verified with a machine readable product identifier, such as a barcode;

(II) [~~(iii)~~] any previous manipulation of the product such as repackaging or extemporaneous compounding has been checked by a pharmacist; and

(III) [~~(iv)~~] quality assurance audits are conducted according to established policies and procedures to ensure accuracy of the process.

(E) (No change.)

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

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

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101013

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 305-8028



SUBCHAPTER E. CLINIC PHARMACY (CLASS D)

22 TAC §291.91

The Texas State Board of Pharmacy proposes amendments to §291.91, concerning Definitions. The proposed amendments, if adopted, clarify the definitions of unit of use and prepackaging as used in Class D pharmacies.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure correct understanding of the definitions for unit of use and prepackaging. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., May 2, 2011.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective

control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.91. *Definitions.*

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

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

(17) Prepackaging--A method of packaging a drug product into a single container which contains more than one dosage unit and usually contains sufficient quantity of medication for one normal course of therapy. [~~The repackaging of drugs from a bulk container into smaller unit of use containers intended for provision to patients.]~~

(18) Provide--To supply one or more units of use [~~unit doses]~~ of a nonprescription drug or dangerous drug to a patient.

(19) - (22) (No change.)

(23) Unit of use--A sufficient quantity of a drug product for one normal course of therapy.

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

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101014

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 305-8028



SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.133

The Texas State Board of Pharmacy proposes amendments to §291.133, concerning Pharmacies Compounding Sterile Preparations. The proposed amendments, if adopted, clarify the compounding requirements for facilities that prepare a low volume of cytotoxic drugs.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure proper procedures for pharmacies compounding low volumes of cytotoxic drugs. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., May 2, 2011.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.133. *Pharmacies Compounding Sterile Preparations.*

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

(d) Operational Standards.

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

(5) Environment. Compounding facilities shall be physically designed and environmentally controlled to minimize airborne contamination of critical sites.

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

(D) Cytotoxic drugs. If the preparation is cytotoxic, the following is also applicable.

(i) General.

(I) All personnel involved in the compounding of cytotoxic products shall wear appropriate protective apparel, such as gowns, face masks, eye protection, hair covers, shoe covers or dedicated shoes, and appropriate gloving.

(II) Appropriate safety and containment techniques for compounding cytotoxic drugs shall be used in conjunction with aseptic techniques required for preparing sterile preparations.

(III) Disposal of cytotoxic waste shall comply with all applicable local, state, and federal requirements.

(IV) Prepared doses of cytotoxic drugs must be dispensed, labeled with proper precautions inside and outside, and distributed in a manner to minimize patient contact with cytotoxic agents.

(ii) Primary engineering control device. Cytotoxic drugs shall be prepared in a Class II or III vertical flow biological safety cabinet or compounding aseptic containment isolator located in an ISO Class 7 area that is physically separated from other preparation areas. The area for preparation of sterile chemotherapeutic preparations shall:

(I) have not less than 0.01 inches water column negative pressure to the adjacent positive pressure ISO Class 7 or better anteroom; and

(II) have a pressure indicator that can be readily monitored for correct room pressurization.

(iii) Facilities that prepare a low volume of cytotoxic drugs. Pharmacies that prepare a low volume of cytotoxic drugs, are not required to comply with the provisions of clause (ii) of this subparagraph if the pharmacy uses a device that provides two tiers of containment (e.g., closed-system vial transfer device within a BSC or CACI that is located in a non-negative pressure room).

(E) - (G) (No change.)

(6) - (13) (No change.)

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

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

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101015

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



SUBCHAPTER H. OTHER CLASSES OF PHARMACY

22 TAC §291.153

The Texas State Board of Pharmacy proposes amendments to §291.153, concerning Central Prescription Drug or Medication Order Processing Pharmacy (Class G). The proposed amendments, if adopted, provide requirements for pharmacists providing cognitive services and electronic verification of prescriptions from remote sites.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure proper procedures for pharmacies compounding low volumes of cytotoxic drugs. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., May 2, 2011.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.153. *Central Prescription Drug or Medication Order Processing Pharmacy (Class G).*

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

(c) Personnel.

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

(3) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by sufficient number of additional licensed pharmacists as may be required to operate the Class G pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities.

(iii) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and pharmacy technician trainees and for designating and delegating duties, other than those listed in subparagraph (B) of this paragraph, to pharmacy technicians and pharmacy technician trainees. Each pharmacist shall be responsible for any delegated act performed by pharmacy technicians and pharmacy technician trainees under his or her supervision.

(iv) Pharmacists shall directly supervise pharmacy technicians and pharmacy technician trainees who are entering prescription data into the pharmacy's data processing system by one of the following methods.

(I) Physically present supervision. A pharmacist shall be physically present to directly supervise a pharmacy technician or pharmacy technician trainee who is entering prescription order or medication order data into the data processing system. Each prescription or medication order entered into the data processing system shall be verified at the time of data entry.

(II) Electronic supervision. A pharmacist may electronically supervise a pharmacy technician or pharmacy technician trainee who is entering prescription order or medication order data into the data processing system provided the pharmacist:

(-a-) is on-site, in the pharmacy where the technician/trainee is located;

(-b-) has immediate access to any original document containing prescription or medication order information or other information related to the dispensing of the prescription or medication order. Such access may be through imaging technology provided the pharmacist has the ability to review the original, hardcopy documents if needed for clarification; and

(-c-) verifies the accuracy of the data entered information prior to the release of the information to the system for storage.

(III) Electronic verification of data entry by pharmacy technicians or pharmacy technician trainees. A pharmacist may electronically verify the data entry of prescription information into a data processing system provided:

(-a-) a pharmacist is on-site in the pharmacy where the pharmacy technicians/trainees are located;

(-b-) the pharmacist electronically conducting the verification is either a:

(-1-) Texas licensed pharmacist; or

(-2-) pharmacist employed by a Class E pharmacy that has the same owner as the Class G pharmacy where the pharmacy technicians/trainees are located or that has entered into a written contract or agreement with the Class G pharmacy, which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations;

(-c-) the pharmacy establishes controls to protect the privacy and security of confidential records; and

(-d-) the pharmacy keeps permanent records of prescriptions electronically verified for a period of two years.

(v) All pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(B) Duties. Duties which may only be performed by a pharmacist are as follows:

(i) receiving oral prescription drug or medication orders and reducing these orders to writing, either manually or electronically;

(ii) interpreting prescription drug or medication orders;

(iii) selection of drug products;

(iv) verifying the data entry of the prescription drug or medication order information at the time of data entry prior to the release of the information to a Class A, Class C, or Class E pharmacy for dispensing;

(v) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant, as specified in §291.33(c) of this title (relating to Operational Standards);

(vi) communicating to the patient or the patient's agent on his or her request information concerning any prescription drugs dispensed to the patient by the pharmacy;

(vii) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(viii) interpreting patient medication records and performing drug regimen reviews; and

(ix) performing a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with the Medical Practice Act.

(4) - (5) (No change.)

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

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

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 4. ADJUTANT GENERAL'S DEPARTMENT

CHAPTER 130. BUILDING CONSTRUCTION ADMINISTRATION

37 TAC §§130.1 - 130.6

The Texas Adjutant General's Department (AGD) proposes a new Chapter 130, §§130.1 - 130.6, concerning Building Construction Administration. The 2007 Legislature enacted Senate Bill 1724, which abolished the Texas Military Facilities Commission and transferred its functions to the Adjutant General's Department. The new rules in Chapter 130 will reflect the changes made in Section 6 of Senate Bill 1724.

Proposed §130.1 sets forth the required qualifications of Architect/Engineer (A/E) for professional services.

Proposed §130.2 sets forth the procedures for the selection of Architect/Engineer professional services.

Proposed §130.3 sets forth requirements for contracts with Architects/Engineers.

Proposed §130.4 sets forth qualifications of contractor to bid construction projects.

Proposed §130.5 sets forth bidding procedures.

Proposed §130.6 sets forth contract award information.

Pamela Darden, Chief Fiscal Officer for the Adjutant General's Department, has determined that for the first five-year period the new rules are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the new rules.

Ms. Darden also has determined that for each year of the first five years the new rules are in effect the public benefit anticipated as a result of enforcing the new rules will be clarification of the policies and procedures the Adjutant General's Department will follow to implement its statutory duties to construct new buildings. There are no anticipated economic costs to persons who are required to comply with the new rules as proposed.

Ms. Darden has determined that the new rules shall not have an effect on small businesses or micro businesses.

Written comments on the proposed new rules may be submitted to Pamela Darden, Chief Fiscal Officer for the Adjutant General's Department, by electronic mail to pamela.a.darden@us.army.mil, or by U.S. mail to P.O. Box 5218, Austin, Texas 78763-5218. Comments are due within 30 days of publication of the proposed new rules in the *Texas Register*.

The new rules are proposed under Senate Bill 1724 which authorizes the Adjutant General's Department to adopt rules necessary for the Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

There is no other statute, article, or code that is affected by the proposed new rules.

§130.1. Qualification of Architect/Engineer (A/E) for Professional Services.

(a) For the purpose of this chapter, an architect/engineer means a person licensed to practice architecture/engineering in Texas. The architect/engineer is employed to provide professional architectural and/or engineering services and having overall responsibility for the design of a project. The term architect/engineer standing by itself may, unless the context clearly indicates otherwise, mean either an architect/engineer employed by the Department on a salary basis or an architect/engineer in private practice retained under a contractual agreement with the Department. The term private architect/engineer shall specifically refer to a registered architect or registered professional engineer in private practice retained by the Department under a contractual agreement.

(b) The A/E shall submit informative responses to a request for qualifications regarding the size of staff, field of interest, experience, and capability and may supplement the answers with brochures and other material.

(c) The staff will maintain all data received from A/E on file for reference.

§130.2. Selection of Architect/Engineer for Professional Services.

When funds are made available to the Department for a construction project, the following procedures shall be followed:

(1) The director will form a selection committee using Department employees who are knowledgeable concerning the nature, scope, project location and who have an understanding of state or federal facility design, engineering, and/or contracting procedures. The director may, with the concurrence of the Adjutant General of Texas, utilize available employees of the Adjutant General's Department or active members of the Texas National Guard to serve as members of such selection committees.

(2) The selection committee will determine from the project description a list of the minimum qualifications that a prospective A/E should possess in order to provide professional services on the project.

(3) The selection committee, where possible, will compile a list of at least three firms that meet or exceed the minimum qualifications for further consideration.

(4) The list will be drawn from a file of A/E firms which have expressed an interest in work supervised by the Department by having responded to a request for qualification or submitting adequate data on experience and capability in other formats.

(5) Firms selected for consideration will be notified and given a brief description of the project, and those interested in further consideration will be scheduled for interviews and the selection committee.

(6) Each firm interested will be rated individually by each committee member on a numeric scale. The firm receiving the highest total rating from the members of the committee will be considered the preferred firm for the project.

(7) In case of identical scores, additional qualifications of the firms will be considered and rated individually until ties are resolved.

(8) The staff will attempt to negotiate an agreement with the architect/engineer scored the highest by the selection committee. Negotiations by the staff will be under the direction of the executive director. Should the staff be unable to reach an agreement with the architect/engineer scored the highest by the selection committee, the staff will terminate negotiations with that architect/engineer and attempt to negotiate an agreement with the architect/engineer scored next highest by the selection committee. Should the commission be unable to reach an agreement with this firm, a similar procedure will be followed until an agreement is reached.

(9) After selection is completed, unsuccessful firms will be advised of the decision.

(10) Items of consideration in making the initial selection will include, but will not be limited to, the following:

(A) the A/E's experience with projects similar in nature to the one for which the firm is being considered;

(B) the location of the A/E's home office relative to the project site;

(C) compatibility between the size of the firm and the size of the project;

(D) the quality and amount of previous work done for the Department (satisfactory experience is obviously conducive to favorable consideration, but in the interest of giving as many eligible and qualified firms as possible a fair chance to obtain Department work, a

substantial amount of prior Department work may be the basis for rejection);

(E) current work load and capability of proceeding with project at reasonable speed;

(F) experience with control of budgets and schedules;

(G) the A/E status as a Historically Underutilized Business (HUB).

§130.3. Contracts with Architects/Engineers.

(a) The contract form for A/E services is a standard document adopted by the staff or National Guard Bureau and approved by the Attorney General of Texas for use.

(b) The contract will name the project, state the budgeted project cost, describe the respective responsibilities of the A/E and the Department, and establish the compensation the A/E will receive for his/her services.

(c) Compensation for A/E services is not bound by a fixed schedule except as may be otherwise established by law.

(d) The contract may be amended to reflect desirable changes in project scope, responsibility, or compensation at any time upon written consent of both contracting parties.

§130.4. Qualifications of Contractor to Bid Construction Projects.

(a) Any contractor interested in participating in bidding on any Department construction/renovation project should advise the Department thereof in writing.

(b) An interested contractor will be sent a contractor's qualifications form to complete and return to the Department. The completed form will provide information concerning the contractor's type of organization, names of partners or officers, type of work performed, experience history, financial condition, bonding capacity, and financial and construction related references. Contractor may update file information as significant changes in status occur.

(c) Staff will determine if contractors meet the minimum qualifications for the project before making bidding documents available.

§130.5. Bidding Procedures.

(a) All Department construction/renovation projects are to be bid competitively with bids being opened publicly in the office of the Department or another location designated in the bid advertisement and in the bid documents.

(b) The staff shall place advertisement of bids in not less than two newspapers of general circulation far enough in advance of the bid opening date to allow bidders time to secure and examine bid documents and to prepare a bid therefrom.

(c) Upon determination by the staff that a project for repair, rehabilitation, or renovation is of an emergency nature necessary to prevent or remove a hazard to life or property, the staff may issue a bid advertisement for such emergency project less than 30 days in advance of bid opening date.

(d) Upon determination by the staff that, in order to prevent undue additional costs to a state agency, it is necessary that a project for repair, rehabilitation, or renovation commence within a time frame which does not permit normal bidding procedures to be utilized, the staff may issue a bid advertisement for such project less than 30 days in advance of bid opening date.

(e) Advertisement for bids shall contain pertinent information on the project, including name and location of the project; date, time

and place of the bid opening and pre-bid conference; where and how bid documents may be obtained; and a listing of the requirements of the contractor for submitting the bid.

(f) To eliminate the expense of bid preparation by a contractor not qualified to perform the work, a contractor must secure the permission of the staff to obtain bidding documents prior to receiving these documents.

(g) All bids submitted must be accompanied by bid bond, cashier's check, or certified check in the amount indicated in the Invitation for Bid and Instructions to Bidders and a Surety's Commitment to provide a Performance and Payment Bond if awarded the contract.

(h) A bid proposal must be submitted on the form, or a clear reproduction thereof, provided with the bid documents.

(i) Bids should be submitted in sealed envelopes externally identified as to content, including project name and number, bid opening date, and name and address of bidder. Failure to identify sealed envelopes containing bid proposal(s) will not disqualify a bid but may increase the possibility of the bid being inadvertently misdirected and not officially received in proper time. It is the sole responsibility of bidders to deliver proposals to the designated bid opening site prior to the time the bids are scheduled to be read. Any bid received after this time will be returned unopened to the bidder.

(j) Bidding documents shall include the plans and specifications, including all addenda issued thereto. Bidders are assumed to have given full consideration to the entire content of and proposal submitted.

§130.6. Contract Award.

(a) Formal award of construction contracts will be made by the staff. Award will be based upon the lowest and best bid received from a qualified bidder.

(b) All advertised conditions, which bear upon the quality of a bid proposal, will be considered when making an award. The Department reserves the right to accept or reject all or any part of any bid, waive minor technicalities, waive any and all formalities of bidding and award the bid to best serve the interests of the State. The Department is not bound to accept the lowest bid or any proposal for this work or any part and has the right to request new bids for the whole or any parts.

(c) Award shall become effective upon the date that the Department formally accepts a bidder's proposal or any part and notice thereof is communicated to the successful bidder. A contract binding on both parties will exist from that date forward.

(d) Formal notice of award to the successful bidder shall be in writing and shall state the basis of award.

(e) The furnishing of any required bonds and insurance by the contractor is not prerequisite to award of contract by constitutes a part of the work and must be provided before any work on the project site is initiated and before the staff can issue a Notice to Proceed.

(f) Contract documents will consist of the following:

(1) the contractor's proposal;

(2) the owner-contractor agreement;

(3) the conditions of the contract (general, supplementary general, and specific conditions);

(4) the drawings and specifications;

(5) the notice and description of the award;

(6) the bidding documents;

(7) the advertisement and Invitation for Bids and Instructions to Bidders;

(8) all addenda to the plans and specifications issued prior to bid opening; and

(9) all change orders issued after execution of the contract.

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

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101028

A. Duane Waddill

Executive Director

Adjutant General's Department

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 782-5688



CHAPTER 131. PREVAILING WAGE RATE DETERMINATION

37 TAC §131.1

The Texas Adjutant General's Department (AGD) proposes a new Chapter 131, §131.1, concerning Prevailing Wage Rate Determination. The 2007 Legislature enacted Senate Bill 1724, which abolished the Texas Military Facilities Commission and transferred its functions to the Adjutant General's Department. The new rule in Chapter 131 will reflect the changes made in Section 6 of Senate Bill 1724.

Proposed §131.1 sets forth prevailing wage rates determination.

Pamela Darden, Chief Fiscal Officer for the Adjutant General's Department, has determined that for the first five-year period the new rule is in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the new rule.

Ms. Darden also has determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of enforcing the new rule will be clarification of the policies and procedures the Adjutant General's Department will follow to implement its statutory duties to construct new buildings. There are no anticipated economic costs to persons who are required to comply with the new rule as proposed.

Ms. Darden has determined that the new rule shall not have an effect on small businesses or micro businesses.

Written comments on the proposed new rule may be submitted to Pamela Darden, Chief Fiscal Officer for the Adjutant General's Department, by electronic mail to pamela.a.darden@us.army.mil, or by U.S. mail to P.O. Box 5218, Austin, Texas 78763-5218. Comments are due within 30 days of publication of the proposed new rule in the *Texas Register*.

The new rule is proposed under Senate Bill 1724 which authorizes the Adjutant General's Department to adopt rules necessary for the Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

There is no other statute, article, or code that is affected by the proposed new rule.

§131.1. Prevailing Wage Rates.

(a) The Department shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by:

(1) conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the locality of the state in which the public work is to be performed; or

(2) using the prevailing wage rates as determined by the United States Department of Labor under the Davis-Bacon Act for the construction locality, if the survey used to determine that rate was conducted within a three-year period preceding the project bid date.

(b) The Department shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents.

(c) The Department shall specify in the contract documents the wage rates determined under this section.

(d) The Department's determination of the general prevailing rate of per diem was is final.

(e) Issues arising under Government Code, §2258.023 shall be submitted to binding arbitration under the Texas General Arbitration Act if the contractor, subcontractor or affected worker do not resolve the issue by agreement before the 15th day after the date the Department makes its initial determination under Government Code, §2258.052.

(f) The Department is not a party in the arbitration.

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-201101027

A. Duane Waddill

Executive Director

Adjutant General's Department

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For further information, please call: (512) 782-5688



CHAPTER 132. SALE OF DEPARTMENT PROPERTY

37 TAC §§132.1 - 132.3

The Texas Adjutant General's Department (AGD) proposes a new Chapter 132, §§132.1 - 132.3, concerning sale of department property. The 2007 Legislature enacted Senate Bill 1724, which abolished the Texas Military Facilities Commission and transferred its functions to the Adjutant General's Department. The new rules in Chapter 132 will reflect the changes made in Section 6 of Senate Bill 1724.

Proposed §132.1 sets forth the property eligible for sale.

Proposed §132.2 sets forth the advertisement for real property sales.

Proposed §132.3 sets forth the expenses for real property sales.

Pamela Darden, Chief Fiscal Officer for the Adjutant General's Department, has determined that for the first five-year period the

new rules are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the new rules.

Ms. Darden also has determined that for each year of the first five years the new rules are in effect the public benefit anticipated as a result of enforcing the new rules will be clarification of the policies and procedures the Adjutant General's Department will follow to implement its statutory duties to dispose of state property. There are no anticipated economic costs to persons who are required to comply with the new rules as proposed.

Ms. Darden has determined that the new rules shall not have an effect on small businesses or micro businesses.

Written comments on the proposed new rules may be submitted to Pamela Darden, Chief Fiscal Officer for the Adjutant General's Department, by electronic mail to pamela.a.darden@us.army.mil, or by U.S. mail to P.O. Box 5218, Austin, Texas 78763-5218. Comments are due within 30 days of publication of the proposed new rules in the *Texas Register*.

The new rules are proposed under Senate Bill 1724 which authorizes the Adjutant General's Department to adopt rules necessary for the Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

There is no other statute, article, or code that is affected by the proposed new rules.

§132.1. Property Eligible for Sale.

Real property is eligible for sale when:

- (1) the Adjutant General declares the property surplus; and
- (2) the sale is in the best interest of the Adjutant General's Department.

§132.2. Real Property Sales.

(a) The real property shall be advertised for cash sale to the highest bidder.

(b) The advertisement shall be published in at least two newspapers of general circulation including, if possible, the county in which the real property is located.

(c) The advertisement shall notify bidders of the following:

- (1) All bids must be in written form.
- (2) Bids are due at a specified time, place and date.
- (3) Bidding may be conducted openly or with sealed bids.
- (4) The real property shall be conveyed by Special Warranty Deed.

(5) The deed shall reserve to the state a one-sixteenth mineral interest fee of the cost of production, unless:

(A) the successful bidder is the Department's original grantor or donor; or

(B) the Department owns less than a one-sixteenth mineral interest.

(6) The Department may reject any and all bids.

(d) If the original grantor or donor is a governmental entity, the Department may convey to the original grantor or donor, at fair market value based on an independent appraisal, the real property and any improvements. If the original grantor or donor declines to purchase

the real property and improvements at fair market value based on an independent appraisal, the Department will initiate a bidding process.

§132.3. Expenses.

The Department shall bear the cost of the following items:

- (1) property survey, including a metes and bounds description;
- (2) owner's title insurance policy; and
- (3) special warranty deed.

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

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101026

A. Duane Waddill

Executive Director

Adjutant General's Department

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For further information, please call: (512) 782-5688



PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.1

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

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes the repeal of §221.1, concerning Proficiency Certificate Requirements.

This section is being replaced by a new rule which allows certificate holders to make application, with supporting documentation, to change the issue date of certificates.

This repeal is necessary to enable accurate issue dates for certain certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be an effect on state or local governments as a result of administering this section. A change in the issuance date of a certificate may cause additional expenses for agencies that offer supplemental pay for certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there is no benefit to the public.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be a cost to small business, individuals, or both as a result of the proposed section. Individuals may make application to change the date on certificates, which requires a fee.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The repeal is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rule-making Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The repeal as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

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

§221.1. Proficiency Certificate Requirements.

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

Filed with the Office of the Secretary of State on March 8, 2011.

TRD-201100947

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 936-7713



37 TAC §221.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes new §221.1, concerning Proficiency Certificate Requirements. This new rule will allow certificate holders to make application, with supporting documentation, to change the issue date of certificates.

This new section is necessary to enable accurate issue dates for certain certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be an effect on state or local governments as a result of administering this section. A change in the issuance date of a certificate may cause additional expenses for agencies that offer supplemental pay for certificates.

The Commission has determined that for each year of the first five years the section as proposed, will be in effect, there is no benefit to the public.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be a cost to small business, individuals, or both as a result of the proposed section. Individuals may make application to change the date on certificates, which requires a fee.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Ste. 200, Austin, TX 78723-1035.

The new section is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The new section as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

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

§221.1. Proficiency Certificate Requirements.

(a) The commission shall issue proficiency certificates in accordance with the Texas Occupations Code §1701.402. Commission certificates issued pursuant to §1701.402 are neither required nor a prerequisite for establishing proficiency or training.

(b) To qualify for proficiency certificates, applicants must meet all the following proficiency requirements:

(1) submit any required application currently prescribed by the commission, requested documentation, and any required fee;

(2) have an active license or appointment for the corresponding certificate (not a requirement for Mental Health Officer Proficiency, Retired Peace Officer and Federal Law Enforcement Officer Firearms Proficiency, Firearms Instructor Proficiency, Firearms Proficiency for Community Supervision Officers, Firearms Proficiency for Juvenile Probation Officers or Instructor Proficiency);

(3) must not have license(s) under suspension by the Commission within the previous 5 years;

(4) meet the continuing education requirements for the previous training cycle;

(5) for firearms related certificates, not be prohibited by state or federal law or rule from attending training related to firearms or from possessing a firearm; and

(6) academic degree(s) must be issued by an accredited college or university.

(c) The commission may refuse an application if:

(1) an applicant has not been reported to the commission as meeting all minimum standards, including any training or testing requirements;

(2) an applicant has not affixed any required signature;

(3) required forms are incomplete;

(4) required documentation is incomplete, illegible, or is not attached; or

(5) an application contains a false assertion by any person.

(d) The commission shall cancel and recall any certificate if the applicant was not qualified for its issue and it was issued:

(1) by mistake of the commission or an agency; or

(2) based on false or incorrect information provided by the agency or applicant.

(e) If an application is found to be false, any license or certificate issued to the appointee by the commission will be subject to cancellation and recall.

(f) The issuance date of a proficiency certificate may be changed upon submission of an application along with documentation supporting the proposed date of eligibility and payment of any required fee.

(g) The effective date of this section is July 14, 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 March 8, 2011.
TRD-201100948
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: April 24, 2011
For further information, please call: (512) 936-7713



37 TAC §221.9

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

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes the repeal of §221.9, concerning Standardized Field Sobriety Testing (SFST) Proficiency. The repeal removes a certificate that did not relate to a licensee's training to conduct Standardized Field Sobriety Tests as instruction is included in the Basic Peace Officer Course.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by removing a confusing certificate that did not relate to a licensee's training to conduct Standardized Field Sobriety Tests.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The repeal is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter

The repeal as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

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

§221.9. *Standardized Field Sobriety Testing (SFST) Proficiency.*

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

Filed with the Office of the Secretary of State on March 8, 2011.
TRD-201100945

Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: April 24, 2011
For further information, please call: (512) 936-7713



CHAPTER 223. ENFORCEMENT

37 TAC §223.20

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §223.20, concerning Revocation of License for Constitutionally Elected Officials. Subsection (c) is amended to clarify the options for revocation based on an offense directly related to the duties of the office held. Subsection (d) is amended to delete references to inapplicable requirements. Subsection (e) is amended for clarity. Subsection (f) is amended for clarity. Subsection (g) is amended to remove unnecessary notification requirements and the following subsections are renumbered. Subsection (i) is amended to reflect the effective date of the change.

This amendment is necessary to establish consistency in the rules ordered by the commission.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by establishing consistency in disciplinary actions by the Commission.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.501, Disciplinary Action.

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

§223.20. *Revocation of License for Constitutionally Elected Officials.*

(a) The commission shall immediately revoke any license issued by the commission to a constitutionally elected officer if the licensee is or has been convicted of a felony offense [~~under the laws of this state, another state, or the United States~~]. The revocation of any license held is effective immediately when the commission receives a certified copy of a court's judgment and issues notice to the licensee that any license held is revoked. Notice of revocation shall be sent via certified U.S. mail to the address shown on the Texas driver's license

record of the licensee and to the address of the agency showing the licensee under current or last appointment.

(b) A constitutionally elected officer is convicted of a felony when an adjudication of guilt on a felony offense is entered against that officer by a court of competent jurisdiction regardless if:

(1) the sentence is subsequently probated and the officer is discharged from community supervision;

(2) the accusation, complaint, information, or indictment against the officer is dismissed and the officer is released from all penalties and disabilities resulting from the offense; or

(3) the officer is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(c) Except as provided by subsection (a) of this section, the commission may revoke the license of a constitutionally elected officer who is ~~[either] convicted of a misdemeanor offense [or placed on deferred adjudication community supervision for a misdemeanor or felony offense,]~~ if the offense directly relates to the duties and responsibilities of any related office held by that officer. In determining whether a criminal offense directly relates to such office, the commission shall, under this subsection, consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purpose for requiring a license for such office;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the officer previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of such office.

(d) Revocation of a license shall permanently disqualify a constitutionally elected officer from licensing, and a license may not be reinstated until the conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has been issued. ~~[except when the licensee proves the facts supporting the revocation have been negated, such as:]~~

~~[(1) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has been issued;]~~

~~[(2) the discharge under less than honorable conditions has been upgraded to honorable conditions;]~~

~~[(3) the report alleged to be false or untruthful was found to be truthful; or]~~

~~[(4) the section was not violated.]~~

(e) During the direct appeal of any ~~[appropriate] conviction [for a misdemeanor offense that is found to be directly related to the duties and responsibilities of office],~~ a license may be ~~[conditionally] revoked pending resolution of the appeal. [The license will remain revoked unless and until the holder proves that the conviction has been set aside on appeal.]~~

(f) An individual whose license has been revoked ~~[The holder of any revoked license]~~ may informally petition the executive director for reinstatement of that license based upon proof ~~[by the licensee]~~ that the facts supporting the revocation have been negated. If granted the executive director shall inform the commissioners of such action no later than at their next regular meeting. If denied, the individual

~~[holder of a revoked license]~~ may petition the commission for a hearing to determine reinstatement based upon the same proof.

~~[(g) Once a license has been revoked, the commission shall search its files and send, by regular mail, notice of the action to the chief administrator or supervising authority of any agency shown to have the licensee under either current or latest appointment.]~~

~~(g) [(h)]~~ The date of revocation will be the earliest date that:

(1) a waiver was signed by the licensee ~~[holder];~~ or

(2) a final order of revocation was signed by the commissioners.

~~(h) [(i)]~~ The effective date of this section is July 14, 2011. ~~[October 28, 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 March 8, 2011.

TRD-201100946

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 936-7713



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 437. FEES

37 TAC §§437.3, 437.5, 437.13

The Texas Commission on Fire Protection (Commission) proposes amendments to Chapter 437, Fees, §437.3, Certification Fees; §437.5, Renewal Fees; and §437.13, Basic Certification Examination Fees. The purpose of these proposed amendments is to raise the fees in the following respect: from \$35 to \$85 for initial certification; from \$35 to \$85 renewal fee; from \$17.50 to \$42.50 for 30-day late renewal fee; from \$35 to \$85 for more than 30-day late renewal fee; and from \$35 to \$85 test application fee. The fee increase is being proposed as a condition being considered by the legislature to allow the Texas Commission on Fire Protection to become self-funded.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect, the total impact will be based upon the number of personnel within a fire fighting organization including but not limited to, fire departments; fire marshal's offices and public safety departments that apply for additional certifications during the year and that increase would be \$50 per each initial certification application and individuals holding certification will also pay the \$50 when they renew their certifications annually. The number of paid personnel that the jurisdiction renews annually at the end of the year will be increased \$50 per person for their renewal application. Applications to test for additional certifications will cost an additional \$50 each.

Mr. Soteriou has also determined that for each year these proposed amendments are in effect, there will be no effect on mi-

cro businesses or small businesses. However, individuals who volunteer to hold certifications and comply with these proposed amendments will be responsible for paying the additional \$50 fee. The public benefit will be to ensure the existence of the Commission to enforce the rules for the safety of the fire fighters and citizens through inspections, testing, and renewing certifications of the fire fighters of the State of Texas.

Comments regarding these proposed amendments may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.026, Fees for Certificates; §419.033, Certificate Expiration; §419.034, Certificate Renewal; and §419.0341, Individual Certificate Holder; Certificate Renewal.

§437.3. Certification Fees.

(a) A ~~\$85~~ [~~\$35.00~~] non-refundable application fee is required for each certificate issued by the Commission. If a certificate is issued within the time provided in §401.125 of this title (relating to Processing Periods), the fee will be applied to the certification. If the certificate is denied, the applicant must pay a new certification application fee to file a new application.

(b) The regulated employing entity shall be responsible for all certification fees required as a condition of appointment.

(c) Nothing in this section shall prohibit an individual from paying a certification fee for any certificate which he or she is qualified to hold, providing the certificate is not required as a condition of appointment (see subsection (b) of this section concerning certification fees).

(d) Any person who holds a certificate, and is no longer employed by an entity that is regulated by the Commission may submit in writing, a request, together with the required fee to receive a one-time certificate stating the level of certification in each discipline held by the person on the date that person left employment pursuant to the Texas Government Code, §419.033(b). Multiple certifications may be listed on the one-time certificate. The one-time fee for the one-time certificate shall be the same as the current certification fee provided in subsection (a) of this section.

(e) A facility that provides basic level training for any discipline for which the Commission has established a Basic Curriculum must be certified by the Commission. The training facility will be charged a separate certification fee for each discipline.

§437.5. Renewal Fees.

(a) A ~~\$85~~ [~~\$35~~] non-refundable annual renewal fee shall be assessed for each certified individual and certified training facility. If an individual or certified training facility holds more than one certificate, the Commission may collect only one ~~\$85~~ [~~\$35~~] renewal fee, which will renew all certificates held by the individual or certified training facility.

(b) A regulated employing entity shall pay the renewal fee for all certificates which a person must possess as a condition of employment.

(c) If a person re-enters the fire service whose certificate(s) has been expired for less than one year, the regulated entity must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fees, the certificates previously held by the individual, for which he or she continues to qualify, will be renewed.

(d) If a person reapplies for a certificate(s) which has been expired less than one year and the individual is not employed by a regulated employing entity as defined in subsection (b) of this section, the individual must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fee(s), the certificate(s) previously held by the individual, for whom he or she continues to qualify, will be renewed.

(e) Nothing in this section shall prohibit an individual from paying a renewal fee for any certificate which he or she is qualified to hold providing the certificate is not required as a condition of employment.

(f) Certification renewal information [~~statements~~] will be sent [~~mailed~~] to all regulated employing entities and individuals holding certification at least 60 days prior to October 31 of each calendar year. Certification renewal information [~~statements~~] will be sent [~~mailed~~] to certified training facilities at least 60 days prior to February 1 of each calendar year.

(g) All certification renewal fees must be returned with the renewal statement to the Commission.

(h) All certification renewal fees must be paid on or before the renewal date posted on the certification renewal statement to avoid additional fee(s).

(i) The certification period shall be a period not to exceed one year. The certification period for employees of regulated employing entities, and individuals holding certification is November 1 to October 31. The certification period of certified training facilities is February 1 to January 31.

(j) All certification renewal fees received from one to 30 days after the renewal date posted on the renewal notice will cause the individual or entity responsible for payment to be assessed a non-refundable ~~\$42.50~~ [~~\$17.50~~] late fee in addition to the renewal fee for each individual for which a renewal fee was due.

(k) All certification renewal fees received more than 30 days after the renewal date posted on the renewal notice will cause the individual or entity responsible for payment to be assessed a non-refundable ~~\$85~~ [~~\$35.00~~] late fee in addition to the renewal fee for each individual for which a renewal fee was due.

(l) In addition to any non-refundable late fee(s) assessed for certification renewal, the Commission may hold an informal conference to determine if any further action(s) is to be taken.

(m) An individual or entity may petition the Commission for a waiver of the late fees required by this section if the person's certificate expired because of the individual or regulated employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with Commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order restoring the applicant to employment.

(n) An individual, upon returning from activation to military service, whose certification has expired, must notify the Commission in writing. The individual will have any normally associated late fees waived and will be required to pay a \$85 [~~\$35.00~~] renewal fee.

§437.13. Processing Fees for Test Application.

(a) A non-refundable application processing fee of \$85 [~~\$35.00~~] shall be charged for each examination.

(b) Fees will be paid in advance with the application or the provider of training may be invoiced or billed if previous arrangements have been made with the Commission.

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

Filed with the Office of the Secretary of State on March 14, 2011.

TRD-201101040

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 936-3813



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 218. MOTOR CARRIERS

The Texas Department of Motor Vehicles (department) proposes amendments to §218.2, Definitions, and §218.11, Motor Carrier Registration.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments to §218.2 are necessary to delete an incorrect entry under the definition of a commercial motor vehicle. Transportation Code, §643.051 refers to Transportation Code, §548.001 for the definition of a commercial motor vehicle. Transportation Code, §548.001 does not include the following within the definition of a commercial motor vehicle: a vehicle transporting household goods for compensation. Therefore, this incorrect entry is deleted from §218.2(7)(A) regarding the definition of a commercial motor vehicle.

Amendments to §218.11(a) and (b) are necessary to make the rule consistent with Transportation Code, §643.001(6) and §643.051 regarding the reference to a road or highway for both the motor carrier operating a commercial motor vehicle and the household goods carrier operating a vehicle.

Amendments to §218.11 add subsection (c) to clarify the word "valid" as it relates to the United States Department of Transportation (USDOT) number required for motor carrier registration. A motor carrier may not operate a commercial motor vehicle upon the public roads or highways of this state without a valid USDOT number. A household goods carrier may not operate a vehicle upon the public roads or highways of this state without

a valid USDOT number. The amendments clarify that the word "valid" means an active number issued by the USDOT.

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Brett Bray, Interim Director, Motor Carrier Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Bray has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments is consistency with Transportation Code, §§548.001, 643.001(6), and 643.051, and a clarification of the phrase "valid USDOT number." There are no anticipated economic costs for persons required to comply with the amendments. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §218.2 and §218.11 may be submitted to Brett Bray, Interim Director, Motor Carrier Division, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on April 25, 2011.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §218.2

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §643.003 and §643.052.

§218.2. Definitions.

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

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

(7) Commercial motor vehicle--

(A) Includes:

(i) any motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds, that is designed or used for the transportation of cargo in furtherance of any commercial enterprise;

(ii) any vehicle, including buses, designed or used to transport more than 15 passengers, including the driver;

(iii) any vehicle used in the transportation of hazardous materials in a quantity requiring placarding under the regulations issued under the federal Hazardous Materials Transportation Act (49 U.S.C. §§5101 - 5128); and

(iv) a commercial motor vehicle, as defined by 49 C.F.R. §390.5, owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States. [~~and~~]

~~[(v) any vehicle transporting household goods for compensation, regardless of the gross weight rating, registered weight or gross weight.]~~

(B) Does not include:

(i) a farm vehicle with a gross weight, registered weight, and gross weight rating of less than 48,000 pounds;

(ii) cotton vehicles registered under Transportation Code, §504.505;

(iii) a vehicle registered with the Railroad Commission under Natural Resources Code, §113.131 and §116.072;

(iv) a vehicle operated by a governmental entity;

(v) a motor vehicle exempt from registration by the Unified Carrier Registration Act of 2005; and

(vi) a tow truck, as defined by Occupations Code, §2308.002 and permitted under Occupations Code, Chapter 2308, Subchapter C.

(8) - (42) (No change.)

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

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101002

Brett Bray

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 463-8683



SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §218.11

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §643.003 and §643.052.

§218.11. Motor Carrier Registration.

(a) A motor carrier may not operate a commercial motor vehicle upon the public roads or [streets and] highways of this state without first obtaining a certificate of registration issued by the department as prescribed in this subchapter and a valid United States Department of Transportation (USDOT) number issued by or under the authority of the Federal Motor Carrier Safety Administration (FMCSA).

(b) A household goods carrier may not operate a vehicle upon the public roads or [streets and] highways of this state without first obtaining a certificate of registration issued by the department as prescribed in this subchapter and a valid USDOT number issued by or under the authority of the FMCSA.

(c) For the purposes of this subchapter, a valid USDOT number is an active USDOT number.

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

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101003

Brett Bray

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: April 24, 2011

For further information, please call: (512) 463-8683



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 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 withdraws the proposed amendment to §255.7, which appeared in the November 12, 2010, issue of the *Texas Register* (35 TexReg 9997).

Filed with the Office of the Secretary of State on March 14, 2011.

TRD-201101035

Howard G. Baldwin, Jr.

Executive Director

Texas Department of Rural Affairs

Effective date: March 14, 2011

For further information, please call: (512) 936-6734



TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.53

Proposed new §537.53, published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8284), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on March 14, 2011.

TRD-201101032



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION SUBCHAPTER A. PRACTICE AND PROCEDURES

DIVISION 1. PRACTICE AND PROCEDURES

34 TAC §1.9

The Comptroller of Public Accounts withdraws the proposed amendment to §1.9 which appeared in the January 28, 2011, issue of the *Texas Register* (36 TexReg 401).

Filed with the Office of the Secretary of State on March 14, 2011.

TRD-201101038

Ashley Harden

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: March 14, 2011

For further information, please call: (512) 475-0387



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

SUBCHAPTER J. STATE PLANNING

ASSISTANCE GRANTS

1 TAC §3.9405

The Criminal Justice Division (CJD) of the Office of the Governor adopts the amendment to Title 1, Part 1, Chapter 3, Subchapter J, §3.9405, concerning General Regulations, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 477).

The adopted amendment to §3.9405 removes the requirement that regional planning commissions (COGs) submit applications for financial assistance covered by the Texas Review and Comment System (TRACS) to the Office of the Governor's State Grants Team for review and comment prior to submitting the application to any federal, state or other agency. The amendment is adopted because TRACS is no longer necessary or efficient in light of current advancements in technology. TRACS was created in response to Executive Order 12372 signed by President Reagan in 1982. As originally intended, TRACS was designed to facilitate the sharing of information related to grant funding and other activities requiring coordination and input between federal, state, and local governments. However, email and the Internet have provided communication tools for disseminating information quickly and efficiently, making TRACS an unnecessary layer of administration that has been made obsolete given advancements in technology.

One comment was received by CJD regarding the proposed amendment of the rule relating to the Texas Review and Comment System (TRACS). The commenter stated that the proposed action "is great news," no other agency cares about review and comment other than Rural Development, and "TRACS is a big waste of time."

The amendment of §3.9405 is adopted under §391.009(a)(1) of the Local Government Code, which provides the Office of the Governor with the authority to adopt rules relating to the operation and oversight of a COG.

The amendment implements §391.012 of the Local Government Code, which addresses state financial assistance to COGS.

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-201100932

David Zimmerman

Assistant General Counsel

Office of the Governor

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For further information, please call: (512) 936-0181



CHAPTER 5. BUDGET AND PLANNING OFFICE

The Office of the Governor (OOG) adopts the repeal of Title 1, Part 1, Chapter 5, Subchapter B (State and Local Review of Federal and State Assistance Applications), which includes §§5.191 - 5.196, 5.211 - 5.217, 5.231 - 5.236, 5.251 - 5.253, and 5.271; Subchapter C (Energy Conservation Design Standards), which includes §§5.301 - 5.303; and Subchapter D (Loan Program for Energy Retrofits), which includes §5.401. The repeal is adopted without changes to the proposal as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 478).

The repeal of Subchapter B, which relates to the Texas Review and Comment System (TRACS), is adopted because TRACS is no longer necessary or efficient in light of current advancements in technology. TRACS was created in response to Executive Order 12372 signed by President Reagan in 1982. As originally intended, TRACS was designed to facilitate the sharing of information related to grant funding and other activities requiring coordination and input between federal, state, and local governments. However, email and the Internet have provided communication tools for disseminating information quickly and efficiently, making TRACS an unnecessary layer of administration that has been made obsolete given advancements in technology.

The repeal of Subchapters C and D is adopted because the State Energy Conservation Office (SECO) is no longer part of the OOG. The SECO, which was originally established in the OOG as the Energy Management Center, was transferred to the General Services Commission and then to the Comptroller of Public Accounts. The Comptroller subsequently adopted rules regarding the subject matter of the rules contained in Subchapters C and D. The Comptroller's rules supersede the rules contained in Subchapters C and D; therefore, the rules contained in Subchapters C and D are no longer necessary.

One comment was received by the OOG regarding the proposed repeal of the rules relating to the Texas Review and Comment System (TRACS). The commenter stated that the proposed action "is great news," no other agency cares about review and comment other than Rural Development, and "TRACS is a big waste of time."

SUBCHAPTER B. STATE AND LOCAL
REVIEW OF FEDERAL AND STATE
ASSISTANCE APPLICATIONS
DIVISION 1. INTRODUCTION AND
GENERAL PROVISIONS OF TEXAS REVIEW
AND COMMENT SYSTEM

1 TAC §§5.191 - 5.196

The repeal of §§5.191 - 5.196 is adopted under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of these rules.

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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DIVISION 2. RESPONSIBILITIES OF REVIEW
PARTICIPANTS

1 TAC §§5.211 - 5.217

The repeal of §§5.211 - 5.217 is adopted under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of these rules.

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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DIVISION 3. REVIEW PROCEDURES

1 TAC §§5.231 - 5.236

The repeal of §§5.231 - 5.236 is adopted under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of these rules.

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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DIVISION 4. ACCOMMODATION OF REVIEW
COMMENTS

1 TAC §§5.251 - 5.253

The repeal of §§5.251 - 5.253 is adopted under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of these rules.

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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DIVISION 5. TRANSITION SCHEDULE

1 TAC §5.271

The repeal of §5.271 is adopted under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of this rule.

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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Office of the Governor

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For further information, please call: (512) 936-0181



SUBCHAPTER C. ENERGY CONSERVATION DESIGN STANDARDS

1 TAC §§5.301 - 5.303

The repeal of §§5.301 - 5.303 is adopted under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of these rules.

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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David Zimmerman

Assistant General Counsel

Office of the Governor

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For further information, please call: (512) 936-0181



SUBCHAPTER D. LOAN PROGRAM FOR ENERGY RETROFITS

1 TAC §5.401

The repeal of §5.401 is adopted under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of this rule.

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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David Zimmerman

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER J. GO TEXAN WILDLIFE PROGRAM

4 TAC §§17.600 - 17.610

The Texas Department of Agriculture (the department) adopts new Title 4, Part 1, Chapter 17, §§17.600 - 17.610 of the Texas Administrative Code, relating to the Go Texan Wildlife Program, without changes to the proposal published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 481). The new sections formally establish the department's Go Texan Wildlife Initiative as the Go Texan Wildlife Program, a program developed to promote businesses and organizations that are based around Texas' diverse and extensive wildlife resources. The program is further adopted in response to widespread approval of the program by businesses and constituents, and to further the department's mandates to promote Texas agriculture and rural economic development. The new sections provide definitions, program qualifications, application procedures, and standards for certification under the program.

No comments were received on the proposal.

New §§17.600 - 17.610 are adopted pursuant to §12.0175 of the Texas Agriculture Code, which provides the department the authority to establish programs by rule to promote and market agricultural products and other products grown, processed, or produced in the state, and charge a membership fee, as provided by department rule, for each participant in a program, and adopt rules to administer a program established under §12.0175. Additionally, the new sections are adopted pursuant to §12.027 of the Texas Agriculture Code, which provides the department with authority to establish rural economic development programs.

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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General Counsel

Texas Department of Agriculture

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



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS

SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 13 TAC §7.125 are not included in the print version of the Texas Register. The figures are available in the on-line version of the March 25, 2011, issue of the Texas Register.)

The Texas State Library and Archives Commission adopts an amendment to §7.125, concerning local government retention schedules for the records of EL (Elections and Voter Registration), GR (Common to All Local Governments), HR (Public Health Agencies), PW (Public Works and Other Government Services), TX (Property Taxation), and UT (Utility Services) with changes to the proposed text as published in the November 19, 2010, issue of the *Texas Register* (35 TexReg 10115). The adopted amendments update these retention schedules.

The proposal to amend §7.125 also included local government retention schedules for the records of CC (County Clerks), DC (District Clerks), LC (Justice and Municipal Courts), and PS (Public Safety Agencies). These four retention schedules have not been adopted pending further analysis of retention for certain court records.

Numerous comments from local government Records Management Officers (RMOs) were received during the comment period. These comments and the resulting changes to the proposed text are identified in this preamble. No comments were received regarding Local Schedules TX (Property Taxation) and UT (Utility Services).

Responses to Comments on Local Schedule EL (Elections and Voter Registration)

Comment: EL3150-07b, Voter Registration Records (Obsolete) - Women. A county RMO noted that the records description incorrectly attributes the 1918 registration of women voters to the passage of the 19th Amendment to the U.S. Constitution, which was not submitted to the states until June 1919, with Texas ratifying it on June 28, 1919. The reason for the 1918 registration of women voters was to permit women to vote in the July primary elections.

Response: The agency removed the phrase "as a result of the passage of the 19th Amendment to the U.S. Constitution" from the records description as requested.

Responses to Comments on Local Schedule GR (Common to All Local Governments)

Comment: GR1000-08, Speeches, Papers and Presentations (by elected officers). A county RMO recommended that the retention period of "end of term in office or termination of service in that position" be changed to "end of term in office or termination of service in that position, whichever is shorter" for clarity. He also recommended adding a reminder that many of these documents have historical value because they explain the policies and positions of the era.

Response: The current retention is based on a single event, the point in time when the elected official stops serving in that capacity. Adding "whichever is shorter" would indicate more than one event may occur. Since this is not the case, the agency did

not change the wording. The agency added a retention note to review these records for historical significance.

Comment: GR1000-08, Speeches, Papers and Presentations (by elected officers). A municipal RMO recommended that only the final written copy of a speech or presentation be included in this records series, and not the notes from previous iterations. She also recommended that only formal policy-oriented speeches be included as opposed to welcome addresses, which are often impromptu, generic in nature, and not written. A retention note to review for historical value was also suggested.

Response: The agency added a retention note to review these records for historical significance as requested. However, the agency decided to continue including drafts in the records series because they often have historical value as well. Keeping them in the records series insures they will also be reviewed for historical significance prior to disposition. Speeches in which no written remarks are prepared do not meet the definition of a local government record and the retention period for this record would not apply. This retention period applies to any speech for which written remarks are prepared.

Comment: GR1000-26, Correspondence and Internal Memoranda. A county RMO recommended adding subject files to the records series title because they are commonly included in correspondence.

Response: The agency changed the records series title to add subject files, and the record description was modified to define subject files for those not familiar with this term.

Comment: GR1000-30, Legal Opinions. A county RMO recommended that the agency (1) change the retention for Attorney General (AG) opinions from "permanent" to "AV" because the AG retains these and makes them available on their agency website; (2) distinguish a formal opinion that a local government attorney may issue on a point of law from the advice that he/she may give concerning the applicability of the law in a specific incident. Public officials and employees often present the attorney with a set of facts on such matters as employment and purchasing, asking if a proposed course of action is permitted. Because this advice has no value after the issue is settled, reduce the retention from "permanent" to "AV".

Response: (1) The requirement for permanent retention of Attorney General Opinions was retained because there is a need for a permanent record of the AG opinion at the local level as evidence of an opinion being rendered for that government. (2) The agency changed the wording to indicate only formal opinions need be retained permanently, and added a retention note to GR1000-26a, Administrative Correspondence, that this records series includes informal opinions.

Comment: GR1000-38, Policy and Procedure Documentation. A municipal RMO commented that with this general retention for policy and procedures records in place, there is no need for duplicate record types in other areas: GR 1025-25, Accounting and GR 5825-05, Data Processing.

Response: Because the agency needs to make a determination with regard to similar records series in all schedules, not just Schedule GR, the agency did not make the suggested change in this revision.

Comment: GR1000-41a5, Reports and Studies - Working Papers. A county RMO commented that while 3-year retention for working papers of a report with permanent retention may be appropriate, he sees no reason to keep working papers of a project

with 3- or 5-year retention for 3 years and suggested a reduction to 1 year.

Response: The agency set the retention period for working papers of permanent reports at 3 years and for working papers of other reports at 1 year.

Comment: GR1000-42, Waivers of Liability. A municipal RMO noted that this 2-year retention differs from the 3-year retention assigned to Schedule PW 5525-04c, Reservation and Registration Records - Waiver of Liability/Parental Consent in Part 10: Park and Recreation Records.

Response: The agency changed the retention from 2 to 3 years to match Schedule PW.

Comment: GR1000-44, Local Government Officers, Lists Of. A county RMO commented that the proposed "US+ 1 year" retention presupposes that such lists will be updated into perpetuity. Since this is not the case, there should be another option and the retention should be changed to "US + 1 year or 3 years, whichever comes first."

Response: The recommended change would result in a local government having no officer list if it had not been updated for more than three years. Because local governments should always maintain a list of current officers, the list should not be destroyed until an updated one is in place, no matter how infrequent the update. The agency did not change the retention period.

Comment: GR1025-01a, Fiscal Audit Records - annual, biennial, or other periodic audit of any department, fund account, or activity of a local government. A county RMO took issue with the permanent retention of some items included in the description, specifically monthly (periodic) audits, and noted the 1995 version of Schedule GR included this important qualifier for periodic audits "if not included in a cumulative audit". He requested that the agency restore the language from the 1995 version permitting destruction after 2 years of an "annual, biennial, or other periodic audit...if included in a cumulative audit."

Response: The agency restored the requested language from the 1995 version of Schedule GR.

Comment: GR1025-01e, Fiscal Audit Records - Working Papers. A county RMO recommended changing the proposed 7-year retention back to the current retention of 3 years, noting that seven years seems excessive and that the 3-year retention seems to have worked perfectly fine.

Response: The agency changed the retention back to 3 years.

Comment: GR1025-08b, Grant Development and Administrative Records. A municipal RMO commented that several types of grant records have retention period requirements that are different from the FE + 3 or +5 year retention periods specified. For example, (1) 40 CFR 35.6705 requires Brownfields Program files to be retained for 10 years following submission of the final Financial Status Report; (2) 24 CFR 385.42 requires the Community Development Block Grant Program records to be retained for 4 years after submission of the final Consolidated Annual Performance Evaluation Report; (3) in accordance with the New Markets Tax Credit (NMTC) Program Notice of allocation NMTC Control Number 09NMA004291, governing regulations records are to be retained for 7 years after project closes.

Response: The agency added a retention note to PART 2: Financial Records, Retention Note (b), "If a grant or loan requires a longer retention period than those stated in this schedule, the

associated records must be retained for the full retention period required by the terms of the grant or loan."

Comment: GR1025-26a, Accounts Payable and Disbursements Record. A county RMO commented that recent experiences and information from the county auditor illustrates the need for a warning that A/P records for bond-funded projects must be retained for the life of the bond, and that A/P records for disasters must be retained until the final audit. He recommended adding a retention note to state that A/P records for bond funded projects and disasters should be separated and retained as separate sub-series.

Response: The agency added a retention note that "Accounts payable and disbursement records for bond-funded projects must be maintained until FE of date of last payment + 5 years." A/P records for disasters are covered by the retention note for grant or loan records in PART 2: Financial Records, Retention Note (b).

Comment: GR1050-32, Workers Compensation Claim Records. A county RMO noted that the citation 29 CFR 1904.33 addresses only federally mandated accident reports while State Workers Compensation regulations provide no guidance. Injured employees have lifetime rights to compensation for work-related injuries and may file multiple claims for the same event as their conditions worsen with age. The county's risk manager believes that a 75-year retention is more prudent than 5-year retention. He recommended that the agency include a cautionary statement prompting local governments to consider retaining worker's compensation files longer than the 5-year minimum because claims can be reopened for workers whose conditions may worsen.

Response: Because a local government is not the record holder of long-term workers compensation files, the agency did not change the 5-year retention. The local government's insurer and the Texas Department of Insurance keep permanent records of workers compensation related records.

Comment: GR1050-39, Volunteer Service Files. A municipal RMO recommended adding a retention note that a file can be closed at the end of term or project if a new file is created for a new term or project. She also noted that this retention differs from the retention assigned to Schedule PW 5600-05, Volunteer Service Files under Social Services Records.

Response: Instead of adding a retention note, the agency added US to the retention period as follows: "US or date of separation + 3 years." This allows local governments to dispose of these records if they are superseded with a new record. This retention period now matches PW5600-05.

Comment: GR1050-54b, Leave Records. A county RMO recommended that the agency change the retention period from FE + 3 years for other governments to simply 3 years.

Response: The agency did not make this change. A determination needs to be made with regards to "FE" requirements for all schedules, not just schedule GR. Also, the current "FE + 3 years" retention period matches the state agency retention requirements.

Comment: GR1075-16a, Construction Project Records. A county RMO had two recommendations. (1) Change the requirement for permanent retention for trivial documents because this creates a real problem. He noted that the retention of similar records for state agencies is only AC + 10 years (5.2.002). He also noted that Construction Project Files attract numerous documents of ephemeral relevance such as rejected design plans,

delivery tickets for expendable products, daily work reports, and some testing reports. As it stands now, local governments are required to keep such trivial documents long past the time they have any real value. He recommended separating GR1075-16a into two items: GR1075.16a1 could be defined as "Records concerning the planning, design, construction,....that architects and engineers require for maintaining, modifying, and repurposing the building" with a retention of "life of structure + 3 years". GR1075-16a2 could be defined as "Records concerning....that are not required for maintaining, modifying, and repurposing the building" with a retention of 5 years. (2) Add a retention note that some construction records merit permanent preservation (e.g. historic courthouses).

Response: (1) The agency added a new records series GR1075-16c, Records relating to construction projects described in (a) and (b), that are transitory or of ephemeral relevance, and are not required for maintaining, modifying, and repurposing the building or structure. Records may include, but are not limited to, rejected design plans, delivery tickets for expendable products, daily work reports, etc. The agency set a retention period of 5 years. (2) The agency added a retention note to GR1075-16a, GR1075-16b, and GR1075-16c, stating that records relating to government-owned structures or places eligible for or already listed as historic by national, state, or local organizations or authorities must be retained permanently.

Comment: GR1075-18b, Maintenance, Repair and Inspection Records. A county RMO recommended the retention period to be changed from 5 to 3 years. He also objected to the retention note that would require permanent retention of records of "routine cleaning, janitorial, and inspection work" for our Recorded Texas Historical Landmark or National Register of Historic Places buildings.

Response: The agency maintained the retention period at 5 years. The retention note regarding permanent retention was moved to clarify that it only applies to GR1075-18b2.

Comment: GR1075-22, Visitor Control Registers. A county RMO recommended changing the 3-year retention period to 1 year or creating a separate record series for sensitive facilities, since most of these registers are not needed again the day after they are created. There may be some facilities that merit 3-year retention, but they are the exception.

Response: The agency retained the 3-year retention. Visitor logs may not become significant until a security incident occurs. School campuses are an example of a local government with security concerns. This retention period also matches the requirement for state agencies.

Comment: GR5750-xx, Employee Health Records. A county RMO suggested adding a records series for Employee Health Records.

Response: The agency did not add this records series because a local government would not typically be the record holder of an employee's health record.

Responses to Comments on Local Schedule HR (Public Health Agencies)

Comment: HR4750-11, Volunteer Services Files. A county RMO recommended changing the retention period to "Termination +3 years" to match similar records series GR1050-39 and changing the records series title from "Volunteer Services Files" to "Volunteer Service Files" to match GR1050-39.

Response: The agency changed the retention period to "Date of separation + 3 years" and changed the records series title to "Volunteer Service Files" to match GR1050-39.

Comment: HR4775-43, Complaints. A county RMO recommended adding a cross reference to Schedule PW. While many/most complaints are easily dealt with, some pollution complaints involve long-term environmental hazards and need to be retained indefinitely.

Response: The agency did not add a cross reference to Schedule PW. If a complaint leads to a long-term investigation or project, the reason for initiating the project will be included in the project's records, with a retention period of 3 years after completion of project.

Responses to Comments on Local Schedule PW (Public Works and Other Government Services)

Comment: PW5250-01d, Blueprints and Specifications. A municipal RMO noted that the city is not always notified when a property is designated as Historical by state and national agencies/organizations. They currently retain residential blueprints and specifications for 3 months after completion; thus many of these records would be destroyed years before a property was designated as historical.

Response: The permanent retention period applies only to property that has already been designated as historic.

Comment: PW 5275-10, Tree and Plant Files. A county RMO questioned why the retention period was increased from 2 to 3 years.

Response: The retention period was increased by the agency's Commission to ensure local governments did not destroy the records before the statute of limitations for tort filing had elapsed.

Comment: PW5275-04, Service and Repair Requests. A county RMO questioned why the retention period was increased from 2 to 3 years.

Response: The retention period was increased by the agency's Commission to ensure local governments did not destroy the records before the statute of limitations for tort filing had elapsed.

Comment: PW5300-03, Traffic Count Reports. A county RMO questioned why the retention period was increased from 1 to 10 years.

Response: Traffic counts are an important record for local governments in determining how to allocate funds for construction and repairs. The agency is retaining the 10 year retention.

Comment: PW5450-xx, Complaints and Investigations - Environmental Hazards. A county RMO proposed a new record series for complaints and investigations of environmental hazards.

Response: The Texas Commission on Environmental Quality conducts most investigations into environmental hazards. At this time only a few large urban areas conduct their own environmental investigations. The agency recommends that those local governments add this record to their own retention schedules. At present the agency will not be adding it to the retention schedules of all local governments in Texas.

Comment: PW5500-xx, Archives and Special Collections Registration Records. A county RMO suggested adding Registration Records with recommended permanent retention. This records series should also include associated records such as confidentiality agreements.

Response: The agency will conduct an investigation to see if these records should be added to a future schedule, but at this time the records will not be included.

Comment: PW5500-xx, Archives and Special Collections Records Requests. A county RMO suggested adding Records Requests with recommended permanent retention.

Response: The agency will conduct an investigation to see if these records should be added to a future schedule, but at this time the records will not be included.

The amendment is adopted under Government Code §441.158 that permits the commission to adopt minimum retention periods for local governments and under Government Code §441.160 that allows the commission to revise the schedules.

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

§7.125. *Records Retention Schedules.*

(a) Local Schedule LC: Records of Justice and Municipal Courts, required to be adopted by rule under Government Code §441.158(a) is adopted by reference. Copies of the schedule are available from the State and Local Records Management Division, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927; (512) 421-7200.

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

(1) Local Schedule GR: Records Common to All Local Governments, 4th Edition.

Figure: 13 TAC §7.125(b)(1)

(2) Local Schedule PW: Records of Public Works and Other Government Services, 2nd Edition.

Figure: 13 TAC §7.125(b)(2)

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

Figure: 13 TAC §7.125(b)(3)

(4) Local Schedule DC: Records of District Clerks, 2nd Edition.

Figure: 13 TAC §7.125(b)(4)

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

Figure: 13 TAC §7.125(b)(5)

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

Figure: 13 TAC §7.125(b)(6)

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

Figure: 13 TAC §7.125(b)(7)

(8) Local Schedule TX: Records of Property Taxation, 3rd Edition.

Figure: 13 TAC §7.125(b)(8)

(9) Local Schedule EL: Records of Elections and Voter Registration, 2nd Edition.

Figure: 13 TAC §7.125(b)(9)

(10) Local Schedule HR: Records of Public Health Agencies, 2nd Edition.

Figure: 13 TAC §7.125(b)(10)

(11) Local Schedule UT: Records of Utility Services, 2nd Edition.

Figure: 13 TAC §7.125(b)(11)

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

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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Edward Seidenberg

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Texas State Library and Archives Commission

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

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

16 TAC §§75.10, 75.20 - 75.30, 75.40, 75.65, 75.70, 75.71, 75.73, 75.80, 75.90, 75.91, 75.100, 75.110

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 75, §§75.10, 75.20 - 75.28, 75.30, 75.40, 75.65, 75.70, 75.71, 75.73, 75.80, 75.90, and 75.100 and new rules at §§75.29, 75.91, and 75.110, regarding the air conditioning and refrigeration program. The amendments to §§75.10, 75.20 - 75.28, 75.40, 75.65, 75.70, 75.71, 75.73, 75.80, 75.90, and 75.100 and new rules at §§75.29, 75.91, and 75.110 are adopted without changes to the proposed text as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10395) and will not be republished. The amendments to §75.30 and §75.100 are adopted with changes to the proposed text as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10395) and are republished. The adoption takes effect April 1, 2011.

Summary and Justification of Changes

The proposed amendments and new rules were published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10395). These changes reflect the public comments submitted in response to the Notice of Intent to Review published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6350), the Department's own review of the rules, and input and recommendations from the Air Conditioning and Refrigeration Contractors Advisory Board on the rule review proposal and the rule simplification initiative. The adopted amendments and new rules reflect all of the input listed above; the public comments received during the 30-day public comment period and during the January 13, 2011, public hearing on the proposed amendments

and new rules; recommendations from the Advisory Board at its February 22, 2011, meeting; and Department staff technical changes.

The adopted changes to §75.10, Definitions, add several new definitions and amend several existing definitions. The adopted rules add new definitions for "biomedical testing," "registrant," "system balancing" and "system testing." The rules delete the definition of "contracting." The rules amend the definitions of "direct supervision," "licensee," and "proper installation and service." The rules also renumber the remaining definitions as applicable to reflect new and deleted definitions. These changes are necessary in order to clarify the terms used in the rules.

The adopted rules amend the title of §75.20 to clarify that this section addresses contractor requirements. The rules amend §75.20(a) by reformatting the existing paragraph into a user-friendly list format and including the use of a department-approved form. The rules also amend §75.20(b) by adding clarifying language in §75.20(b)(1) regarding the institution's program being approved by the Texas Board of Professional Engineers for the purpose of licensing engineers. This change reflects the language in the statute. The rule also deletes the education substitutes for practical experience under §75.20(b)(2) and (3) to conform to the eligibility requirements under the statute.

The adopted rules amend the title of §75.21 to clarify that this section addresses contractor requirements. The rules delete the language under existing §75.21(b) and replace it with a reference to more detailed examination requirements that are found in the Department's Chapter 60 rules, which apply to all of the Department's programs. The rules also delete §75.21(d) because it is not necessary. The Department's third party examination contractor would not qualify a person as eligible for an examination if the person had already taken and passed the exam.

The adopted rules amend the title of §75.22 to clarify that this section addresses contractor requirements.

The adopted rules makes several amendments to §75.23 based on the recommendations of the advisory board. The advisory board stated that there is still a need to have a temporary license rule. A temporary license is necessary in order for a company to continue business until a permanent contractor license could be secured; however, the advisory board recommended some changes to the existing rule. The rule shortens the timeframes for requesting a temporary license from 30 days to 15 calendar days. The term of the temporary license remains at 30 days, although the proposal clarifies that the timeframe is 30 "calendar" days. The rule also narrows the eligibility requirements for a temporary license to only those companies that lose their only licensed contractor due to death or disability of the contractor. The rule removes eligibility for a temporary license due to dissolution of a company or partnership. Finally, the rule removes the requirement that the person who will hold the temporary license--an owner, partner, or employee already associated with the firm--must meet all eligibility requirements to take an examination for a contractor license. The rule now allows a company to just hire a new licensed contractor. Having the owner, partner or existing employee take the examination and obtain a contractor license is no longer the only option for a company to obtain a new licensed contractor.

The adopted rules amend the title of §75.24 to clarify that this section addresses contractor renewal requirements. The rule also removes references to "registration" renewal requirements. The renewal requirements for contractor licenses and technician

registrations are not the same. The technician registration renewal requirements have been moved to new §75.29.

The adopted changes to §75.24 are necessary to clarify what a contractor must do to renew his license. Section 75.24(a) has been redrafted in a list format to set out the requirements for what a contractor has to do to renew his license, including completing continuing education requirements and using a department approved form. The rules also delete former §75.24(b) since the license renewal requirements are set out under the Department's Chapter 60 rules, which apply to all of the Department's programs. The rules delete former §75.25(g) and (h) since they are no longer necessary.

The adopted rules make several amendments to §75.26 that are necessary to clarify the certificate requirements. The rule amends §75.26(a) by reformatting the existing subsection into a user-friendly list format and including the use of a department-approved form. The rule adds a new §75.26(b), which states that the certificate is not transferrable from one person to another. This language is similar to the language for contractor licenses and technician registrations. The rule makes technical corrections to renumbered §75.26(c) (formerly §75.26(b)). The change links this subsection back to subsection (a), which sets out the two categories of persons who are required under the statute to obtain a certificate of registration--maintenance personnel and licensed engineers. It also removes the term "registrant" since this is a term used for technicians. Persons holding certificates of registration to purchase refrigerants are referenced elsewhere in this section as "certificate holders."

The adopted rules also delete provisions under §75.26 in order to reflect the statute and to delete provisions already addressed in the statute. The rules delete former §75.26(c) and (d), which address the certificate of registration to purchase refrigerant being valid or invalid based on the person's employment status. The statute does not provide that a certificate automatically becomes invalid if the person ceases employment or changes jobs. The rules also delete former §75.26(f), which states that a flammable refrigerant or refrigerant substitute that has been listed as acceptable by the U.S. Environmental Protection Agency (EPA) may be sold and used in accordance with the rules issued by the EPA. Occupations Code §1302.352 already requires a person who purchases, sells or uses a refrigerant in Texas to comply with the requirements of the federal Clean Air Act and rules adopted under that Act. It is unnecessary to address this requirement again in the Department's rules. The rules also delete former §75.26(g), which addresses the purchase of equipment classified as a small appliance under the federal regulations. The exemption for small appliances as defined by the federal regulations is already addressed under Occupations Code §1302.351. It is unnecessary to address this exemption again in the Department's rules.

The adopted rules clarify the title of §75.27. The changes also amend §75.27(a) by reformatting the existing paragraph into a user-friendly list format and including the use of a department-approved form.

The adopted rules make technical corrections to §75.28. The changes clarify the title and §75.28(c) by replacing "certification" with "certified technician designation." These changes make the provisions consistent with the statute and §75.28(b) and will provide clarification under §75.80, Fees. The rule also requires the use of a department-approved form.

The adopted rules add new §75.29, which addresses the renewal requirements for technician registrations. These requirements are currently combined with the contractor license renewal requirements under §75.24. The rule also clarifies that a technician must renew his registration annually, regardless of whether or not he has a certified technician designation. It is the underlying registration that must be renewed.

The adopted rules make several amendments to §75.30, Exemptions. The rule adds clarifying introduction language under subsection (a) that ties the exemptions back to those listed in the statute.

The rule amends §75.30(a)(1) by changing the reference from "public utility" to "electric or gas utility" to match the statute. The exemption is retained in the rule because it includes clarifying language that the person is performing air conditioning and refrigeration services in connection with his employment with the electric or gas utility. The provision does not allow a person employed by an electric or gas utility to perform air conditioning and refrigeration contracting for anyone other than the utility he is employed by.

The adopted rules amend §75.30(a)(2) to conform to the scope of the exemption in the statute. The exemption in the statute only applies to a person who performs air conditioning and refrigeration contracting on a building owned by the person as the person's home ("homeowner exemption"). The exemption has been amended and retained in the rules because the language clarifies that the person is not performing air conditioning and refrigeration services for the general public and is not performing air conditioning and refrigeration services in a building other than the person's own home. It also clarifies that the exemption only applies to the homeowner, not someone assisting the homeowner.

The adopted rules delete former §75.30(a)(4) from the rules since it was outside the scope of the statute.

The adopted rules do not make any changes to former §75.30(a)(5) (now renumbered as subsection (a)(4)). The exemption is retained in the rules because it contains clarifying language that the person may not install, repair or remove any other part of the exhaust system.

The proposed amendments and new rules as published proposed deleting the exemption under §75.30(b). However, due to the public comments received, this proposed deletion is withdrawn and will not be adopted, as explained below under "Public Comments."

The adopted rules amend the title of §75.40 to clarify that this section addresses contractor requirements. The rules also amend §75.40(e), which addresses a request to waive the insurance requirements because the license holder does not contract with the public. Specifically, the rules delete §75.40(e)(3), which requires that the waiver request be accompanied by a confirmation of employment by the current employer when working under the license of another contractor as an employee. The Department determined that this provision is unnecessary and that any necessary information would be captured under §75.40(e)(2), which requires a detailed explanation of the conditions under which the waiver is requested.

The adopted rules make technical corrections to §75.70. The rules amend the title to clarify that this section addresses contractor requirements, and clarify that "30 days" is "30 calendar days" under §75.70(h)(1) and (2). The changes also adopt new

§75.70(a)(11), which states that a licensee can only use licensed contractors or registered technicians for maintenance work.

The adopted rules make technical corrections to §75.71. The amendments shorten the title of the section and change "30 business days" to "30 calendar days" under §75.71(a)(1). This change makes the provision consistent with other provisions that have 30-day timeframes. The rules also amend §75.71(i) to include the Department's website address in the Department information that is included on proposals and invoices, written contracts and certain signs. The effective date for including the website information on these documents is September 1, 2011. The adopted rules also include new §75.71(k), which states that a contracting company can only use licensed contractors or registered technicians for maintenance work.

The adopted rules makes technical corrections to §75.73. The amendments shorten the title of the section and clarify that "30 days" is "30 calendar days" under §75.73(d).

The adopted rules amend the contractor fees under §75.80(b) by deleting the contractor examination fee of \$90. The contractor examination fees are established by and are payable to the Department's third-party examination contractor. This fee no longer needs to be included in the Department rules.

The adopted rules reorganize the technician fees under §75.80(d) and clarify the certified technician designation fee. The technician registration renewal fee has been moved to new paragraph (3) and it applies whether the technician has a certified technician designation or not. The underlying registration must be renewed. The changes add clarity to new paragraph (2) (former paragraph (3)) regarding the certified technician designation application fee. Language has been added to clarify that this fee is in addition to the technician registration application fee. Former paragraphs (4) and (5) have been consolidated into one provision, paragraph (4). A revised or duplicate technician registration application, with or without the certified technician registration, is \$15. The amendments do not make any changes to the existing fee amounts.

The adopted rules make technical changes to the title and substance of §75.90.

The adopted rules add new §75.91, which provides notice that the Department has new enforcement authority under Texas Occupations Code, Chapter 51 due to the 81st Legislative Session (2009). Chapter 51 was amended to make the Department's enforcement authority consistent across programs, especially as new programs or occupations are moved to the Department. The enforcement authority under Chapter 51 is in addition to that set out under the air conditioning and refrigeration statute and rules.

The adopted rules amend §75.100(a), Electrical Connections. Section 75.100(a)(4) is amended to add a reference to the "International Residential Code, where applicable." This change updates the rule to reflect the applicable codes.

The adopted rules amends §75.100(b), Piping. The rule amends §75.100(b)(3) by changing "Mechanical piping" to "Other piping, fittings, valves and controls." Subsection (b)(1) addresses fuel gas piping, subsection (b)(2) addresses drain piping, and subsection (b)(3) as amended addresses all other piping and related parts.

The adopted rules amend §75.100(c), Duct Cleaning. The rule amends subsection (c) to clarify that biomedical remediation requires a contractor license under Texas Occupations Code, Chapter 1302 and that biomedical testing does not require a

contractor license under Texas Occupations Code, Chapter 1302. It also removes references to "an unlicensed person or company" and replaces these references with "a person or entity that does not hold a contractor license under Texas Occupations Code, Chapter 1302." This change is in response to a request for clarification from the advisory board and a member of the public at the advisory board's meeting on August 26, 2010.

The adopted rules amend §75.100(d), Process Cooling and Heating. The rules add clarifying language to §75.100(d)(2) regarding a person or entity that does not hold a contractor license performing maintenance, service and repairs on the secondary open loop components after a licensed contractor has deactivated and rendered inert the primary closed loop system. This language reflects a recommended change that was offered at previous advisory board meetings.

The adopted rules amend §75.100(e), Standards. The rules amend §75.100(e)(1), regarding municipalities that have adopted a code by ordinance. The rules change the language to reference codes that are "consistent with the standards established under the Act and these rules." This wording reflects the language in the statute regarding municipal standards. The rules also amend §75.100(e)(2), regarding municipalities that have not adopted a code by ordinance. This paragraph has been clarified and broken down into separate parts to address the applicable codes based on whether the building is a single family home or townhouse or whether the building is commercial or a multiple family dwelling.

The adopted rules add new §75.100(f), System Testing and Balancing. This rule addresses system testing and system balancing in response to recommendations from the advisory board. The new rule provides that system testing does not require a contractor license under Texas Occupations Code, Chapter 1302 and that system balancing does require a contractor license under Texas Occupations Code, Chapter 1302. New definitions for "system balancing" and "system testing" were added under §75.10.

The adopted rules add new §75.110 that would identify and adopt applicable codes for the air conditioning and refrigeration program similar to what is done in the electrician program and other code-based programs. The air conditioning and refrigeration statute and rules often reference the "applicable codes" or "current codes," but no specific codes had been identified or adopted. This new rule would identify such codes, and the adopted editions are the 2009 Uniform Mechanical Code and the 2009 International Mechanical Code, the International Residential Code and other applicable and related codes. The effective date for use of these codes is September 1, 2011.

The adopted rules also made technical changes.

Public Comments

The proposed amendments and new rules were published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10395). The 30-day public comment period closed on December 27, 2010. The Department received public comments from five interested parties: Associated Builders and Contractors of Texas (ABC of Texas), Texas Apartment Association (TAA), Associated General Contractors-Texas Building Branch (AGC-TBB), and two individuals.

The Department also received requests for a public hearing from the Associated Builders and Contractors of Texas and the Associated General Contractors-Texas Building Branch. A public

hearing was held January 13, 2011. All of the proposed amendments and proposed new rules were open for comment at the public hearing. Three interested parties testified at the hearing, and all three testified on §75.30(b).

The following is a summary of the public comments received during the 30-day public comment period and during the public hearing and the Department's responses to those public comments.

Public Comment: An individual submitted a comment expressing concerns that new workers after completing an education program were not able to get a job or go out on their own. The individual stated there was a lot of work that could be done without having a license or registration or having to work for a company. The individual stated that most companies require three years or more of experience. He thought the rules helped companies and not new workers.

Department Response: The Department did not make any changes to the proposed rules in response to this comment. The concerns raised in the comment would require statutory changes to the contractor licensing, education and experience requirements, and are not changes that could be made by rule.

Public Comment: An individual offered a comment about whether the ACR technician initial and renewal registration requirements included a criminal background check since proposed rules §75.27 and §75.29 do not specifically mention it. The individual also suggested that the Department should clarify the term "criminal offense" in §75.27, since it could include a wide range of offenses. Finally, the individual noted that criminal offenses were not mentioned in the ACR contractor general licensing requirements (§75.22) or in the contractor renewal application requirements (§75.24).

Department Response: The Department has statutory authority under Occupations Code Chapters 51, 53, and 1302 to conduct criminal background checks on applicants and licensees. The criminal history question is part of the required department-approved application form. An affirmative response to the question directs the applicant to fill out a Criminal History Questionnaire. Regarding clarifying the term "criminal offense," the application form asks the applicant to include all felonies and misdemeanors other than minor traffic violations. Regarding criminal offenses as they relate to contractor licensing and renewal requirements, the contractor initial and renewal applications also include a criminal history question as part of the department approved form. The Department did not make any changes to the proposed rules in response to these comments.

Public Comment: The Texas Apartment Association commented that there appeared to be no changes in the rules that would affect the statutory exemption under Occupations Code §1302.054 for certain maintenance personnel. The association specifically noted the exemptions under §75.30 and requested that the Department not alter any aspect of the statutory maintenance personnel exemption. The association did not suggest any changes to the proposed rules.

Department Response: The Department did not propose any changes to the rules that would affect the maintenance personnel exemption contained in the statute.

Public Comment: The Department received two written comments in response to the proposed deletion of §75.30(b), and three interested parties testified at the public hearing on this provision.

Associated Builders and Contractors of Texas (ABC of Texas) submitted written comments, requested a public hearing, testified at the public hearing, and offered public comments at the March 4, 2011, Commission meeting. ABC of Texas strongly opposed deleting the exemption provided for general contractors under current §75.30(b). "Eliminating this provision could change substantially the way jobs are bid and contracted for in the construction industry." ABC of Texas commented that while the existing exemption allows unlicensed general contractors to bid or contract for work that involves air conditioning and refrigeration work, it does not allow them to perform the work. The general contractors use licensed subcontractors to perform work that requires a license. The proposed change would have a negative impact on the construction industry in Texas if only contractors licensed under the statute could bid or contract for any work that had an air conditioning and refrigeration component.

Associated General Contractors-Texas Building Branch (AGC-TBB) submitted written comments, requested a public hearing, testified at the public hearing, and offered public comments at the February 22, 2011, Advisory Board meeting. AGC-TBB expressed strong concerns about the proposed deletion of §75.30(b). AGC-TBB stated that general contractors often build projects where air conditioning and refrigeration is a component of the project. General contractors either have these licensees or hire subcontractors who are licensed to do that component of the work. AGC-TBB stated that the proposed rule change threatens to interfere with general contractors' ability to bid or contract on such projects, which could sharply reduce the number of available bidders to perform such work. AGC-TBB requested that the exemption not be deleted.

A representative of Greenstar Mechanical testified at the public hearing in favor of the proposed deletion of §75.30(b). The representative commented that general contractors should not have an exemption and that the authority to submit a bid on air conditioning and refrigeration work should remain with the licensed ACR contractor.

Department Response: Based on the comments received, the Department recommended withdrawing this provision from the proposal for further study. At its meeting on February 22, 2011, the Advisory Board agreed with the Department and recommended that the proposed deletion of §75.30(b) be withdrawn from the proposal and further studied. Based on these recommendations, the current §75.30(b) exemption for general contractors will remain in place, and the Department will have a separate rulemaking in the future on this particular provision. In addition, Department staff recommended a technical correction to the introduction language in subsection (a) to ensure the rule is consistent with Occupations Code §1302.051, Limitation on Exemptions.

At its March 4, 2011, meeting the Commission adopted the proposed amendments to existing rules and proposed new rules with the recommendations and technical corrections identified above.

The amendments and new rules are adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the proposal.

§75.30. Exemptions.

(a) The Act and this chapter do not apply to those persons exempt under Occupations Code, Chapter 1302, with the following clarifications:

(1) persons who conduct air conditioning and refrigeration contracting, who are employed by a regulated electric or gas utility facility and perform those services in connection with the utility business in which the person is employed;

(2) a person who engages in air conditioning and refrigeration contracting in a building owned solely by the person as the person's home and who does not engage in the occupation of air conditioning and refrigeration contracting for the general public. This exemption applies only to the homeowner and not to others who may attempt to assist the homeowner;

(3) those who hold a valid Certificate of Authorization issued by the American Society of Mechanical Engineers or The National Board of Boiler and Pressure Vessel Inspectors that are:

(A) appropriate for the scope of work to be performed, and

(B) performed solely on boilers as defined in Chapter 755 of the Health and Safety Code; and

(4) persons who install, repair, or remove a vent hood of the type commonly used in residential and commercial kitchens, as long as the person does not install, repair or remove any other part of the exhaust system.

(b) Unlicensed general contractors may bid or contract for a job that includes air conditioning or refrigeration if the job does not consist solely of work requiring a license under the Act.

§75.100. Technical Requirements.

(a) Electrical Connections.

(1) On new construction of environmental air conditioning, commercial refrigeration, and process cooling or heating systems, licensees may connect the appliance to the electrical line or disconnect that is provided for that purpose.

(2) Licensees may replace and reconnect environmental air conditioning, commercial refrigeration, process cooling or heating systems, or component parts of the same or lesser amperage. On replacement environmental air conditioning, commercial refrigeration, process cooling or heating systems where the electrical disconnect has not been installed and is required by the applicable National Electrical Code, the licensee may install a disconnect and reconnect the system.

(3) Control wiring of 50 volts or less may be installed and serviced by a licensee. Control wiring for commercial refrigeration equipment of any voltage may be installed by a licensee with the commercial refrigeration endorsement as long as the control wiring is on the equipment side of the disconnect installed for that purpose.

(4) All electrical work shall be performed in accordance with standards at least as strict as that established by the applicable National Electrical Code and the International Residential Code, where applicable.

(b) Piping.

(1) Fuel gas piping for new or replaced environmental air conditioning, commercial refrigeration, or process cooling or heating systems may be installed by a licensee. Fuel gas piping by a licensee is limited to the portion of piping between the appliance and the existing piping system, connected at an existing shut-off valve for such use.

Existing piping systems, stops, or shut-off valves shall not be altered by a licensee.

(2) Drain piping associated with environmental air conditioning, commercial refrigeration, or process cooling or heating systems shall be installed by a licensee if it terminates outside the building. If the piping terminates inside the building, a licensee may make the connection if the connection is on the inlet side of a properly installed trap. Such drain piping shall be installed in accordance with applicable plumbing and building codes.

(3) Other piping, fittings, valves and controls associated with environmental air conditioning, commercial refrigeration, or process cooling or heating systems shall be installed by a licensee.

(c) Duct cleaning.

(1) Duct cleaning and air quality testing, including biomedical testing, may be performed by a person or entity that does not hold a contractor license under Texas Occupations Code Chapter 1302 if:

(A) the task is limited to the air distribution system, from the supply plenum to the supply grilles of the unit and from the return air grill to the air handler intake of the unit;

(B) no cuts are made to ducts or plenums;

(C) no changes are made to electrical connections; and

(D) the only disassembly of any part of the system is opening or removal of return and supply air grilles, or registers that are removable without cutting or removing any other part of the system.

(2) Biomedical testing may be performed by a person or entity that does not hold a contractor license under Texas Occupations Code, Chapter 1302.

(3) Biomedical remediation requires a contractor license under Texas Occupations Code, Chapter 1302.

(d) Process Cooling and Heating.

(1) Process cooling and heating work does not include cryogenic work.

(2) Process cooling and heating work is limited to work performed on piping and equipment in the primary closed loop portions of processing systems containing a primary process medium. Once a primary closed loop process system has been deactivated and rendered inert by a licensee, a person or entity that does not hold a contractor license under Texas Occupations Code, Chapter 1302 may perform maintenance, service and repairs on the secondary open loop components including piping, heat exchangers, vessels, cooling towers, sump pumps, motors, and fans.

(e) Standards.

(1) The standard for the practice of air conditioning and refrigeration in a municipality is the code the municipality adopted by ordinance that is consistent with the standards established under the Act and this chapter.

(2) The standard for the practice of air conditioning and refrigeration in an area where no code has been adopted is:

(A) The applicable edition of the International Residential Code for one- and two-family dwellings, and multiple single family dwellings (townhouses) not more than three stories in height with separate means of egress, together with the applicable editions of the International Fuel Gas Code and the International Energy Conservation Code;

(B) For commercial work and any multiple family residential work that exceeds the limitations of subparagraph (A), the contractor performing the work may choose between:

(i) the applicable edition of the Uniform Mechanical Code; or

(ii) the applicable editions of the International Mechanical Code, International Fuel Gas Code and International Energy Conservation Code.

(f) System Testing and Balancing.

(1) System testing may be performed by a person or entity that does not hold a contractor license under Texas Occupations Code, Chapter 1302.

(2) System balancing requires a contractor license under Texas Occupations Code, Chapter 1302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101020

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: April 1, 2011

Proposal publication date: November 26, 2010

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



PART 8. TEXAS RACING COMMISSION

CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

SUBCHAPTER C. PROCEEDINGS BY STEWARDS AND RACING JUDGES

16 TAC §307.62

The Texas Racing Commission adopts an amendment to 16 TAC §307.62, concerning disciplinary hearings. The section relates to the procedural framework for the conduct of hearings by racing stewards and judges. The amendment is adopted without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11460) and will not be republished.

The change clarifies the standard of evidence and the standard of proof that will be applied in disciplinary hearings, and sets out the standard for granting continuances.

No comments were received regarding the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §3.07, which authorizes the Commission to make rules specifying the authority and duties of stewards and judges.

The amendment implements Texas Revised Civil Statutes Annotated Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2011.

TRD-201100962

Mark Fenner

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Texas Racing Commission

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Proposal publication date: December 24, 2010

For further information, please call: (512) 833-6699



CHAPTER 321. PARI-MUTUEL WAGERING

The Texas Racing Commission adopts amendments to 16 TAC §§321.15, 321.23, 321.211, 321.312, 321.417, 321.503, and 321.605. The Commission also adopts new §§321.12, 321.46, 321.320, and 321.321. The amendments relate to: pari-mutuel wagering, including totalisator licenses, wagering information, and results; live wagering, including carryover pools, pick (n) pools; simulcast wagering, including emergency procedures and purses; and electronic pari-mutuel wagering within the enclosure of racetracks. The new sections relate to: synchronizing the time between the totalisator systems, video output and security systems; payment on tickets that a self-serve terminal failed to issue due to mechanical failure; and new pari-mutuel pools, including super hi-five pools and fortune pick (n) pools. With the exception of new §321.321, the amendments and new rules are adopted without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11461) and will not be republished. New §321.321 is adopted with changes and will be republished.

New §321.12 improves the ability of the Commission, the totalisator companies, and the associations to audit wagering irregularities by synchronizing the time between the totalisator system, the video output, and the security systems.

The change to §321.15 clarifies the type of license that a totalisator company must obtain in order to provide totalisator services to a racetrack in Texas.

The change to §321.23 clarifies and further defines the language for the locations that an association shall use to post the required information. The change also adds an expiration date to vouchers to conform to the statutory changes adopted in House Bill 2701 by the 80th Legislature.

New §321.46 establishes the procedures to follow when there is a ticket jam or paper outage on a self-serve terminal.

The change to §321.211 provides clear direction to the associations regarding the type of account to deposit the money in a carryover pool when the money is required to be escrowed.

The change to §321.312 provides clear direction to the associations regarding the type of account to deposit the money in a carryover pool when the money is required to be escrowed. The change also provides direction regarding distribution of a pick (n) pool if a turf race must be relocated to another racing surface.

New §321.320 is a new wagering pool that requires the bettor to select the five animals that will finish first, second, third, fourth, and fifth in one race.

New §321.321 is a new wagering pool similar to a pick (n) in that it requires the bettor to pick the winner of number (n) consecutive races, but differs in that it requires a single unique winning ticket and the wager must be made in the minimum amount.

The change to §321.417 provides an association with additional time to resolve video signal issues.

The change to §321.503 gives an association the ability to increase the amount of purse money allocated to the purse account from the sale of the racetrack's signal.

The change to §321.605 allows the Commission to review an association's plan for suspending an e-wagering account.

The Commission received no comments on the proposals for §§321.12, 321.15, 321.23, 321.46, 321.211, 321.312, 321.320, 321.417, 321.503, and 321.605.

In response to the proposal for new §321.321, Lone Star Park, Gulf Greyhound Park, and the Texas Greyhound Association commented that the proposal needed minor adjustments to modify how scratches would be handled and to add clarifying language regarding how the pool is handled at the end of the race meet.

The Commission agrees with the comments received on §321.321 and adopts the proposal with the following changes:

1. the association may designate the major pool percentage instead of the major pool being set at 75 percent;
2. should there be a scratch, the actual favorite at the time of the start of the race will be substituted instead of a refund issued; and
3. on the last performance of the race meeting or on a designated mandatory payout performance, if one or more races comprising the fortune pick (n) are canceled the major pool and the minor pool for that performance shall be combined with the prior performance major pool and paid out instead of the association refunding all fortune pick (n) tickets.

SUBCHAPTER A. MUTUEL OPERATIONS

DIVISION 1. GENERAL PROVISIONS

16 TAC §321.12, §321.15

The new rule and amendment are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering.

The new rule and amendment implement Texas Revised Civil Statutes Annotated, Article 179e.

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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Mark Fenner

General Counsel

Texas Racing Commission

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DIVISION 2. WAGERING INFORMATION AND RESULTS

16 TAC §321.23

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering.

The adopted amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

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DIVISION 3. MUTUEL TICKETS AND VOUCHERS

16 TAC §321.46

The new rule is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering.

The adopted new rule implements Texas Revised Civil Statutes Annotated, Article 179e.

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SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 1. GENERAL PROVISIONS

16 TAC §321.211

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commis-

sion to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering.

The adopted amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

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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DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §§321.312, 321.320, 321.321

The new rules and amendment are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering.

The adopted new rules and amendment implement Texas Revised Civil Statutes Annotated, Article 179e.

§321.321. *Fortune Pick (n).*

(a) The fortune pick (n) wager is not a parlay and has no connection with or relation to the win, place, and show pools shown on the tote board. All tickets on the fortune pick (n) shall be calculated as a separate pool.

(b) The fortune pick (n) pari-mutuel pool consists of amounts contributed for a selection to win only in each of six, seven, eight, nine, or 10 races designated by the association. After designating the number of races comprising the fortune pick (n), the association may not change the number during a race meeting without prior written approval of the executive secretary.

(c) A person purchasing a fortune pick (n) ticket shall designate the winning animal in each of the races comprising the fortune pick (n). The association shall issue to the purchaser of a fortune pick (n) ticket a ticket that reflects each of the purchaser's selections.

(d) A fortune pick (n) ticket is a contract between the holder of the ticket and the association and the ticket constitutes acceptance of this section. The association, totalisator company, and the State of Texas are not liable to a person for a fortune pick (n) ticket that is not a winning ticket under this section or for a fortune pick (n) ticket that is not delivered.

(e) A coupled entry or mutuel field in a race that is part of the fortune pick (n) races shall race as a single betting interest for the purpose of mutuel pool calculations and payoffs to the public.

(f) The fortune pick (n) pool shall be distributed as provided by this section. The net pool in the fortune pick (n) pool is divided into a major pool and a minor pool. The association may designate the major pool percentage of the net amount wagered on the fortune pick (n).

The remaining percentage constitutes the minor pool. The association shall notify the executive secretary in writing before the beginning of each race meeting of its designation regarding the division between the major and minor pools. After designating the division between the major and minor pools, an association may not change the division during a race meeting without prior written approval of the executive secretary.

(g) Fortune pick (n) with minor pool and carryover with unique wager: the entire net fortune pick (n) pool and carryover, if any, shall be distributed to the holder of a unique wager selecting the first place finisher in each of the selected fortune pick (n) contests, based upon the official order of finish. If there is no unique wager selecting the first place finisher in all fortune pick (n) contests, the minor share of the net fortune pick (n) pool shall be distributed as a single price pool to those who selected the first place finisher in the greatest number of fortune pick (n) contests; and the major share shall be added to the carryover.

(h) Unique wager, as used in this rule, shall be defined as having occurred when the total amount wagered on a winning combination selecting the first place finisher in each of the selected fortune pick (n) contests, based upon the official order of finish, is equal to the minimum allowable wager.

(i) If there is a dead heat for first in any of the fortune pick (n) contests involving:

(1) Contestants representing the same betting interest, the fortune pick (n) pool shall be distributed as if no dead heat occurred.

(2) Contestants representing two or more betting interests, the fortune pick (n) pool shall be distributed as a single price pool with each unique winning wager receiving an equal share of the profit.

(j) Should a betting interest in any of the fortune pick (n) contests be scratched, excused, or determined to be a non-starter, the actual favorite, as shown by the largest amount wagered in the win pool at the time of the start of the race, will be substituted for the non-starting selection for all purposes, including pool calculations and payoffs. If there are two or more favorites in the win pool, both favorites will be substituted for the non-starting selection.

(k) Except as otherwise provided by this subsection, if one or more races in the fortune pick (n) are canceled or declared a "no race", the amount contributed to the major pool for that performance shall be added to the minor pool for that performance and distributed as an extra amount in the minor pool to the holders of the tickets that designate the most winners in the remaining races. All contributions to the major pool from prior performances shall remain in the major pool, to be carried forward to the next performance to be paid in the major pool for that performance. If the stewards or racing judges cancel or declare a "no race" in three or more of the races comprising a fortune pick six, seven, or eight, four or more of the races comprising the fortune pick nine, or five or more of the races comprising the fortune pick 10, the fortune pick (n) is canceled and the association shall refund all fortune pick (n) tickets. A person may not win the major pool unless the person holds a fortune pick (n) ticket that correctly designates the official winners of all the scheduled races comprising the fortune pick (n) for that performance unless it is on the last performance of the race meeting or a designated mandatory payout performance. On the last performance of a race meeting or on a designated mandatory payout performance, if one or more races comprising the fortune pick (n) are canceled or declared a "no race", the major pool and the minor pool for that performance shall be combined with the prior performance major pool and be paid to those holders of tickets who correctly designated the most winners of the remaining races of the fortune pick (n). If on the last performance of the race meeting or on a designated mandatory payout

performance the major pool and the minor pool cannot be distributed in accordance with this subsection then the major and minor pool shall be handled in accordance with subsection (n) of the section.

(l) When the condition of the turf course warrants a change of racing surface in any of the races open to fortune pick (n) wagering, and such change has not been made known to the betting public prior to the close of wagering for the first fortune pick (n) race, the Stewards shall declare the changed races a "no contest" for fortune pick (n) wagering purposes and the pool shall be distributed in accordance with subsection (k) of this section. Following the designation of a race as a "no contest", no tickets shall be sold selecting a horse in such "no contest" race.

(m) If on the last performance of the race meeting or on a designated mandatory payout performance the major pool is not distributable under subsection (g) of this section, the major pool and all money carried forward into that pool from previous performances shall be combined with the minor pool and distributed to the holders of tickets correctly designating the most winners of the races comprising the fortune pick (n) for that performance.

(n) If the final or designated mandatory payoff performance is canceled or the major pool has not been distributed, the major pool shall be deposited in an interest-bearing account approved by the executive secretary. The major pool plus all accrued interest shall then be carried over and included in a major pool offered on one of the first five days of the next subsequent race meeting or on the next performance after the undistributed mandatory payout performance, as approved by the executive secretary.

(o) Except for refunds required by this section, a fortune pick (n) ticket may not be sold, exchanged, or canceled after the close of wagering on the first of the fortune pick (n) races.

(p) A person may not disclose the number of tickets sold in the fortune pick (n) pool or the number or amount of tickets selecting winners of the races comprising the fortune pick (n) until the results of the last race comprising the fortune pick (n) are official. The totalisator equipment shall be programmed or constructed to suppress the publication or printing of any such information, except the total number of dollars wagered in the fortune pick (n), until the results of the last race comprising the fortune pick (n) are official.

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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Mark Fenner

General Counsel

Texas Racing Commission

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SUBCHAPTER D. SIMULCAST WAGERING DIVISION 1. GENERAL PROVISIONS

16 TAC §321.417

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound

racing, and §11.01, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering.

The adopted amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

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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DIVISION 3. SIMULCASTING AT HORSE RACETRACKS

16 TAC §321.503

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering.

The adopted amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

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SUBCHAPTER E. TICKETLESS ELECTRONIC WAGERING

DIVISION 1. CONDUCT OF E-WAGERING

16 TAC §321.605

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering.

The adopted amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

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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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §229.461 and §229.464, and the repeal of §229.462 and §229.463, concerning the regulations addressing dietary supplements with ephedrine group alkaloids and restricting the sale and distribution of drugs containing ephedrine without changes to the proposed text as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9620) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The first three of the four rules which currently comprise Subchapter Y of the food and drug rules (§§229.461 - 229.463) restrict and regulate the sale and distribution of dietary supplements containing ephedrine group alkaloids. The fourth rule, §229.464, restricts and regulates the sale and distribution of drugs containing ephedrine. Since adoption of these rules, the U.S. Food and Drug Administration (FDA) has effectively banned entirely the sale and distribution of all dietary supplements containing ephedrine alkaloids by its adoption of 21 Code of Federal Regulations (CFR), §119.1. As the FDA has declared all dietary supplements containing ephedrine alkaloids adulterated foods under §402(f)(1)(A) of the federal Food, Drug, and Cosmetic Act, the department's rules regarding dietary supplements containing ephedrine group alkaloids require revision to be consistent with the federal regulations in this area.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 229.461 - 229.464 have been reviewed and the department has determined that the first dietary supplement rule, §229.461, should be amended and the second and third rules, §229.462 and §229.463, be repealed to reflect and be consistent with the federal prohibition on the sale and distribution of dietary supplements containing ephedrine group alkaloids. The reasons for adoption of the fourth rule, §229.464, which applies to ephedrine in drugs, continue to exist and, therefore, this rule continues to be needed.

SECTION-BY-SECTION SUMMARY

The title of Subchapter Y was reworded to "Regulations to Prohibit the Sale of Dietary Supplements Containing Ephedrine Group Alkaloids; and to Restrict the Sale and Distribution of Certain Products Containing Ephedrine."

Section 229.461 is being amended by changing the title of this rule to "Regulations to Prohibit the Sale and Distribution of Dietary Supplements Containing Ephedrine Group Alkaloids" and deleting rule language so that it reads: "The sale or distribution of any dietary supplement containing ephedrine group alkaloids is prohibited."

Section 229.462 and §229.463 are being repealed in their entirety to be consistent with the ban on the sale and marketing of these food products under 21 CFR, §119.1.

The amendment to §229.464(d)(5) consists of adding the legal citation to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C., §§301 *et seq.*, for reference purposes.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER Y. REGULATIONS TO PROHIBIT THE SALE OF DIETARY SUPPLEMENTS CONTAINING EPHEDRINE GROUP ALKALOIDS; AND TO RESTRICT THE SALE AND DISTRIBUTION OF CERTAIN PRODUCTS CONTAINING EPHEDRINE

25 TAC §229.461, §229.464

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §431.241, which authorizes the department to adopt rules and to conform its rules, if practicable, with regulations the U.S. FDA adopts; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of the Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, the four-year agency review requirement.

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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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972



SUBCHAPTER Y. REGULATIONS TO SET STANDARDS FOR THE FORMULATION, SALE AND DISTRIBUTION OF DIETARY SUPPLEMENTS CONTAINING EPHEDRINE FROM NATURAL EPHEDRA ALKALOIDS AND TO RESTRICT THE SALE AND DISTRIBUTION OF CERTAIN DRUG PRODUCTS CONTAINING EPHEDRINE

25 TAC §229.462, §229.463

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §431.241, which authorizes the department to adopt rules and to conform its rules, if practicable, with regulations the U.S. FDA adopts; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of the Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, the four-year agency review requirement.

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TITLE 30. ENVIRONMENTAL QUALITY PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 213. EDWARDS AQUIFER SUBCHAPTER C. DISCHARGE OF PESTICIDES

30 TAC §213.31

The Texas Commission on Environmental Quality (agency, commission, or TCEQ) adopts new §213.31 *without changes* to the

proposed text as published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10813) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

On September 9, 2010, the Texas Parks and Wildlife Department submitted a petition for rulemaking (Project Number 2010-058-PET-NR) which requested an exemption for discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statutes from discharge prohibitions currently found in Chapter 213, Subchapters A and B; and in Chapter 311, Subchapters A, B, and F. On November 3, 2010, the commission recommended approval of the petition for rulemaking.

A recent decision from the Sixth Circuit Court of Appeals overturned the United States Environmental Protection Agency's (EPA) rule which provided that National Pollutant Discharge Elimination System (NPDES) permits were not required for pesticide applications into, over, or near waters of the United States (*National Cotton Council of America v. U.S. EPA*, 553 F.3d 927). As a result of the Sixth Circuit Court of Appeals decision and because Texas is a delegated state, the discharge of pesticides must now be regulated through the Texas Pollutant Discharge Elimination System (TPDES). By court order, applications of pesticides into, over, or near water in the United States must be authorized under the NPDES program by April 9, 2011. Currently, because the discharge of pesticides is not a point source, Chapters 213 and 311 allow the application of pesticides. However, on April 9, 2011, pesticide application will be prohibited within the Highland Lakes area (Lakes Travis, Austin, Inks, Buchanan, Lyndon B. Johnson, and Marble Falls) and Edwards Aquifer recharge, contributing, and transition zones.

This rulemaking allows the application of pesticides to continue within these areas for protection of human health and the environment. The inability to control pests could impact public health by preventing mosquito control, restricting recreational activities in the regulated areas due to invasive aquatic vegetation or invasive animals, restrict state and federal agencies from administering programs within their jurisdiction, restrict the volume of water flow in surface waters overlying the aquifer due to invasive aquatic vegetation, and increase the potential for public water supply systems to experience taste and odor problems due to excessive vegetation and algae in surface waters overlying the aquifer.

Section Discussion

New Subchapter C, §213.31, Discharge of Pesticides, would allow for the continued use of commission authorized pesticide application in areas of the Edwards Aquifer where the increase of discharges or new pollutant loading will be prohibited after April 9, 2011.

Final Draft Regulatory Impact Analysis

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a major environmental rule. A "major environmental rule" means a rule that 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.

This rulemaking would exempt discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statute from the discharge prohibitions in Chapter 213, Subchapters A and B. This rule is not a major environmental rule and does not meet any of the four applicability requirements that apply to a major environmental rule. Under Texas Government Code, §2001.0225, this adopted rule does not exceed a standard set by federal law or a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The adopted rule does not exceed a standard set by federal law nor exceeds the requirement of a delegation agreement.

The rulemaking does not adopt a rule solely under the general powers of the commission and does not exceed an express requirement of state law.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period; no comments were received.

Takings Impact Assessment

The commission's assessment indicates that Texas Government Code, Chapter 2007, does not apply to the adopted rule because the rulemaking is not a taking as defined in Chapter 2007, nor is it a constitutional taking of private real property. The purpose of the rule is to exempt discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statute from the discharge prohibitions in Chapter 213, Subchapters A and B.

Promulgation and enforcement of this rulemaking will not affect private real property, which is the subject of the rule, because the rulemaking will not restrict or limit the owner's right to the property or cause a reduction of 25% or more in the market value of the property. The rule only applies to environmental testing laboratories that submit data to the commission for use in its decisions. Property values will not be decreased, because the new rule will not limit the use of real property. Thus, this rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the rule is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received concerning the Coastal Management Program.

Public Comment

The commission held a public hearing on January 6, 2011. The comment period closed on January 14, 2011. The commission received comments from the Central Texas Golf Course Superintendent Association (CTGCSA); Jersey Meadows Golf Course; the Lone Star Golf Course Superintendent Association (LSGCSA); TCEQ's Office of Public Interest Counsel (OPIC); the Texas Parks and Wildlife Department; and the Texas Tur-

fgrass Association. All six comments expressed support for the rule as proposed; of the six, three approved of the rule provided that the rule will cover golf courses located within the geographic area specified in Chapter 213. One comment was received from Pape-Dawson Engineers, Inc. with two questions concerning the rule and two questions on the draft pesticide application permit. One comment was received from Practical Vector Control which did not relate to this rule action and one comment was received from an individual expressing disapproval of the rule action.

Response to Comments

The GCSA, the Jersey Meadows Golf Course, the LSGCSA, TCEQ's OPIC, the Texas Parks and Wildlife Department, and the Texas Turfgrass Association expressed support of the rule as proposed, with CTGCSA, LSGCSA and the Texas Turfgrass Association supporting the rule provided that the rule would apply to golf courses and was not specific to State Agencies.

The rule language as proposed is non-specific and will apply to all pesticide application activities over the Edwards Aquifer as defined by this subchapter and authorized by the TCEQ under the TPDES program. No change was made in response to these comments.

Pape-Dawson Engineers, Inc. asked if the rulemaking would prohibit the use of pesticides on a golf course or park located over the Edwards Aquifer Recharge Zone.

The rulemaking will allow for the continuation of all TCEQ-authorized pesticide applications occurring over the Edwards Aquifer recharge, contributing and transition zones. No change was made in response to this comment.

Pape-Dawson Engineers, Inc. asked if the rulemaking would prohibit the sale and delivery of pesticides to users, such as golf courses, parks departments, and homeowners, in areas located within or near the Edwards Aquifer Recharge and Contributing Zone.

The rulemaking will not affect the sale or delivery of pesticides to users in areas located over the Edwards Aquifer recharge, contributing, and transition zones. However, individuals and entities that purchase, sell, or deliver pesticides are required to comply with all the rules and regulations governing the purchase, sale, or delivery of pesticides. No change was made in response to this comment.

Pape-Dawson Engineers, Inc. asked if there will be a "blanket" requirement for all pesticides, or will the TCEQ prepare a list of specific pesticides that are "exempt from the NPDES permit process," and if the proposed rule is adopted and it does not provide exemptions for licensed applicators, what must the applicator do to obtain a NPDES permit for the application of pesticides or herbicides.

These questions pertain to the general permit for pesticide application and are not addressed by this rule action. Information regarding the general permit can be found at: http://www.tceq.texas.gov/permitting/water_quality/stakeholders/pesticidegp_stakeholder_group.html. No change was made in response to this comment.

Practical Vector Control submitted a comment related to the development of the general permit for pesticide application.

This permit action does not address the development of the general permit for the application of pesticides. Information regarding the general permit can be found at:

http://www.tceq.texas.gov/permitting/water_quality/stakeholders/pesticidegp_stakeholder_group.html. No change was made in response to this comment.

One individual expressed concern that application of pesticides over the Edwards Aquifer is only serving to pollute the environment and that continued application of chemicals only contributes to the continued death and destruction of the environment and human health.

The executive director acknowledges this individual's position, but must respectfully disagree. Use of pesticides over the Edwards Aquifer areas has been occurring for years and is required for the protection of both human health and the environment. Without the use of pesticides, disease carrying vectors, such as mosquitoes, would proliferate and could potentially severely impact human health. Additionally, use of herbicides to control invasive species in our waters is needed; without these herbicides invasive species would overgrow the waters, choking out native species, and possibly lower water quality to the point that aquatic life would be impacted. No change was made in response to this comment.

Statutory Authority

The new section is adopted under Texas Water Code (TWC), §5.103, which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws of Texas; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.105, which provides the commission with the authority to establish and approve all general policy of the commission by rule; TWC, §7.002, which authorizes the commission to enforce provisions of the TWC; TWC, §26.011, which authorizes the commission to control and maintain the quality of the water in the state and grants the commission the powers necessary or convenient to carry out its responsibilities; TWC, §26.046, which requires the commission to hold annual public hearings to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution; TWC, §26.121, which prohibits unauthorized discharges into or adjacent to water in the state; TWC, §26.401, which states the goal for groundwater protection in the state; and TWC, §28.011, which authorizes the commission to make and enforce rules for the protection and preservation of groundwater quality; and Chapter 213, which regulates activities over the recharge, contributing, and transition zones of the Edwards Aquifer.

The adopted new section implements TWC, §§26.011, 26.121, 26.401, and 28.011; and Chapter 213.

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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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0779



CHAPTER 311. WATERSHED PROTECTION

SUBCHAPTER I. DISCHARGE OF PESTICIDES

30 TAC §311.91

The Texas Commission on Environmental Quality (agency, commission, or TCEQ) adopts new §311.91 *without changes* to the proposed text as published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10899) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

On September 9, 2010, the Texas Parks and Wildlife Department submitted a petition for rulemaking (Project Number 2010-058-PET-NR) which requested an exemption for discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statutes from discharge prohibitions currently found in Chapter 213, Subchapters A and B; and in Chapter 311, Subchapters A, B, and F. On November 3, 2010, the commission recommended approval of the petition for rulemaking.

A recent decision from the Sixth Circuit Court of Appeals overturned the United States Environmental Protection Agency's (EPA) rule which provided that National Pollutant Discharge Elimination System (NPDES) permits were not required for pesticide applications into, over, or near waters of the United States (*National Cotton Council of America v. U.S. EPA*, 553 F.3d 927). As a result of the Sixth Circuit Court of Appeals decision and because Texas is a delegated state, the discharge of pesticides must now be regulated through the Texas Pollutant Discharge Elimination System (TPDES). By court order, applications of pesticides into, over, or near water in the United States must be authorized under the NPDES program by April 9, 2011. Currently, because the discharge of pesticides is not a point source, Chapters 213 and 311 allow the application of pesticides. However, on April 9, 2011, pesticide application will be prohibited within the Highland Lakes area (Lakes Travis, Austin, Inks, Buchanan, Lyndon B. Johnson, and Marble Falls) and Edwards Aquifer recharge, contributing, and transition zones.

This rulemaking allows the application of pesticides to continue within these areas for protection of human health and the environment. The inability to control pests could impact public health by preventing mosquito control, restricting recreational activities in the regulated areas due to invasive aquatic vegetation or invasive animals, restrict state and federal agencies from administering programs within their jurisdiction, restrict the volume of water flow in surface waters overlying the aquifer due to invasive aquatic vegetation, and increase the potential for public water supply systems to experience taste and odor problems due to excessive vegetation and algae in surface waters overlying the aquifer.

Section Discussion

New Subchapter I, §311.91, Discharge of Pesticides, would allow for the continued use of commission authorized pesticide application into the Highland Lakes where the increase of discharges will be prohibited after April 9, 2011.

Final Draft Regulatory Impact Analysis

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a major environmental rule. A "major environmental rule" means a rule that 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.

This rulemaking would exempt discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statute from the discharge prohibitions in Chapter 311, Subchapters A, B, and F. This rule is not a major environmental rule and does not meet any of the four applicability requirements that apply to a major environmental rule. Under Texas Government Code, §2001.0225, this adopted rule does not exceed a standard set by federal law or a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The adopted rule does not exceed a standard set by federal law nor exceeds the requirement of a delegation agreement.

The rulemaking does not adopt a rule solely under the general powers of the commission and does not exceed an express requirement of state law.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period; no comments were received.

Takings Impact Assessment

The commission's assessment indicates that Texas Government Code, Chapter 2007, does not apply to the adopted rule because the adopted rule is not a taking as defined in Chapter 2007, nor is it a constitutional taking of private real property. The purpose of the rule is to exempt discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statute from the discharge prohibitions in Chapter 311, Subchapters A, B, and F.

Promulgation and enforcement of the rule will not affect private real property, which is the subject of the rule, because the new rule will not restrict or limit the owner's right to the property or cause a reduction of 25% or more in the market value of the property. The rule only applies to environmental testing laboratories that submit data to the commission for use in its decisions. Property values will not be decreased, because the amendments will not limit the use of real property. Thus, this rule will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the rule is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received concerning the Coastal Management Program.

Public Comment

The commission held a public hearing on January 6, 2011. The comment period closed on January 14, 2011. The commission received comments from the Central Texas Golf Course Superintendent Association (CTGCSA); Jersey Meadows Golf Course; the Lone Star Golf Course Superintendent Association (LSGCSA); TCEQ's Office of Public Interest Counsel (OPIC); the Texas Parks and Wildlife Department; and the Texas Turfgrass Association. All six comments expressed support for the rule as proposed; of the six, three approved of the rule provided that the rule will cover golf courses located within the geographic area specified in Chapter 213. One comment was received from Pape-Dawson Engineers, Inc. with two questions concerning the rule and two questions on the draft pesticide application permit. One comment was received from Practical Vector Control which did not relate to this rule action and one comment was received from an individual expressing disapproval of the rule action.

Response to Comments

The GCSA, the Jersey Meadows Golf Course, the LSGCSA, TCEQ's OPIC, the Texas Parks and Wildlife Department, and the Texas Turfgrass Association expressed support of the rule as proposed, with CTGCSA, LSGCSA, and the Texas Turfgrass Association supporting the rule provided that the rule would apply to golf courses and was not specific to State Agencies.

The rule language as proposed is non-specific and will apply to all pesticide application activities over the Edwards Aquifer as defined by this subchapter and authorized by the TCEQ under the TPDES program. No change was made in response to these comments.

Pape-Dawson Engineers, Inc. asked if the rulemaking would prohibit the use of pesticides on a golf course or park located over the Edwards Aquifer Recharge Zone.

The rulemaking will allow for the continuation of all TCEQ-authorized pesticide applications occurring over the Edwards Aquifer recharge, contributing, and transition zones. No change was made in response to this comment.

Pape-Dawson Engineers, Inc. asked if the rulemaking would prohibit the sale and delivery of pesticides to users, such as golf courses, parks departments, and homeowners, in areas located within or near the Edwards Aquifer Recharge and Contributing Zone.

The rulemaking will not affect the sale or delivery of pesticides to users in areas located over the Edwards Aquifer recharge, contributing, and transition zones. However, individuals and entities that purchase, sell, or deliver pesticides are required to comply with all the rules and regulations governing the purchase, sale, or delivery of pesticides. No change was made in response to this comment.

Pape-Dawson Engineers, Inc. asked if there will be a "blanket" requirement for all pesticides, or will the TCEQ prepare a list of specific pesticides that are "exempt from the NPDES permit process," and if the proposed rule is adopted and it does not provide exemptions for licensed applicators, what must the applicator do to obtain a NPDES permit for the application of pesticides or herbicides.

These questions pertain to the general permit for pesticide application and are not addressed by this rule action. Information regarding the general permit can be found at: http://www.tceq.texas.gov/permitting/water_quality/stakehold-

[ers/pesticidegp_stakeholder_group.html](http://www.tceq.texas.gov/permitting/water_quality/stakeholders/pesticidegp_stakeholder_group.html). No change was made in response to this comment.

Practical Vector Control submitted a comment related to the development of the general permit for pesticide application.

This permit action does not address the development of the general permit for the application of pesticides. Information regarding the general permit can be found at: http://www.tceq.texas.gov/permitting/water_quality/stakeholders/pesticidegp_stakeholder_group.html. No change was made in response to this comment.

One individual expressed concern that application of pesticides over the Edwards Aquifer is only serving to pollute the environment and that continued application of chemicals only contributes to the continued death and destruction of the environment and human health.

The executive director acknowledges this individual's position, but must respectfully disagree. Use of pesticides over the Edwards Aquifer areas has been occurring for years and is required for the protection of both human health and the environment. Without the use of pesticides, disease carrying vectors, such as mosquitoes, would proliferate and could potentially severely impact human health. Additionally, use of herbicides to control invasive species in our waters is needed; without these herbicides invasive species would overgrow the waters, choking out native species, and possibly lower water quality to the point that aquatic life would be impacted.

Statutory Authority

The new section is adopted under Texas Water Code (TWC), §5.103, which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws of Texas; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.105, which provides the commission with the authority to establish and approve all general policy of the commission by rule; TWC, §7.002, which authorizes the commission to enforce provisions of the TWC; TWC, §26.011, which authorizes the commission to control and maintain the quality of the water in the state; TWC, §26.121, which prohibits unauthorized discharges into or adjacent to water in the state; and Chapter 311, which regulates discharges into certain watersheds.

The adopted new section implements TWC, §26.011 and §26.121; and Chapter 311, Subchapters A, B, and F.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101009

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0779



CHAPTER 319. GENERAL REGULATIONS
INCORPORATED INTO PERMITS
SUBCHAPTER C. PUBLIC NOTICE OF
SPILLS OR ACCIDENTAL DISCHARGES
FROM WASTEWATER FACILITIES OWNED OR
OPERATED BY LOCAL GOVERNMENTS

30 TAC §319.302, §319.303

The Texas Commission on Environmental Quality (agency, commission, or TCEQ) adopts the amendments to §319.302 and §319.303.

Section 319.302 is adopted *with changes* to the proposed text as published in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9831). Section 319.303 is adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Chapter 319, Subchapter C requires wastewater facilities owned by local governments to notify local governments and local media following certain wastewater spills and discharges. The rule establishes when notification is required and includes the form used to provide such notifications. The notification form provides recommended safety actions for the general public to take in the event of a wastewater spill or discharge. These rules were originally created in response to a specific wastewater spill into Brushy Creek in the Austin Metropolitan area that resulted in bacterial infection for several residents residing in the impacted area of the spill. The recommended safety precautions currently contained in the spill notice form at §319.303 were specifically worded for this spill event. However, the recommended safety precautions are not applicable to all wastewater spill events and have resulted in confusion amongst the general public for spill events in other areas.

Section by Section Discussion

The commission adopts the amendment to §319.302, Notification Requirements, providing clarification to the regulated community and general public on when and under what conditions notice must be provided. Specifically, §319.302(b)(1) was changed to remove the phrase "...recreational uses..." in response to comments received which indicated that use of this phrase added additional confusion and was contradictory to language in the statute at Texas Water Code (TWC), §26.039(e), which specifically refers to drinking water sources only.

The commission adopts the amendment to §319.303, Form of the Notice to Local Officials and Local Media, providing clarification to the regulated community concerning what information must be included in a notice of a wastewater spill and to clarify precautionary language that may be contained in a wastewater spill notice for the general public. Additionally, the adopted amendment will remove the form from the rule replacing it with minimum notification requirements.

Final Regulatory Impact Analysis Determination

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code, and it does not meet any of the four applicability

requirements listed in §2001.0225(a). The adopted rules do not adversely affect in a material way the environment or the public health and safety of the state or a sector of the state. The adopted rules are designed to protect human health by reducing potential exposure to accidental discharges or spills from wastewater treatment and collection facilities.

The economy, a sector of the economy, productivity, competition, or jobs will not be adversely affected in a material way because the additional costs caused by the rules are minimal. There are no costs to businesses or the private sector. The adopted rules will potentially add costs for notice to local governments and local media. The additional costs added by the rules are not substantial; however, because the local governments are already required by TWC, §26.039(b) to notify the commission of all spills which cause, or may cause, pollution.

The adopted rules do not adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state, because the proposed rules are designed to protect human health by reducing potential exposure to accidental discharges or spills from wastewater treatment and collection facilities owned or operated by a local government.

This adoption does not exceed a standard set by federal law and is specifically required by state law. There is no standard set by federal law for notification of local governments and local media of spills from wastewater treatment or collection facilities owned or operated by local governments. The adopted rules are specifically required by TWC, §26.039(f), to specify the conditions under which a spill must be reported to appropriate local government officials and local media. This adoption does not exceed the requirements of a delegation agreement or contract between the state and federal government. There is no agreement or contract between the commission and the federal government concerning notification of local governments and local media of spills from wastewater treatment or collection facilities owned or operated by local governments.

The adopted rules are not adopted solely under the general powers of the commission; instead, they are adopted under a specific state law. The specific state law is TWC, §26.039(f), which requires the commission by rule to specify the conditions under which a spill must be reported to appropriate local government officials and local media.

The commission determined that no regulatory impact analysis was required by Texas Government Code, §2001.0225, for this adopted rulemaking. The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments concerning the regulatory impact analysis determination were received.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the adopted rules is to implement the requirements of House Bill 1074, 76th Legislature, 1999, which amends TWC, §26.039, to require notice to local governmental officials and local media of spills or accidental discharges from wastewater treatment or collection facilities owned or operated by local governments. The adopted rules substantially advance this specific purpose by identifying which entities must report and the conditions under which these reports must be made. This adopted rulemaking improves the usefulness of the form of the notice to local government officials and local media. Promulgation and

enforcement of these adopted rules will not burden private real property. The adopted rules only affect wastewater treatment or collection facilities owned or operated by local governments.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received concerning consistency with the Coastal Management Program.

Public Comment

The commission held a public hearing on December 9, 2010. The comment period closed on December 13, 2010. The commission received comments from Baker Botts L.L.P. and The Water Environment Association (WEAT) of Texas who, generally, supported the proposed amendments, but recommend changes based on statutory requirements.

Response to Comments

Both commenters stated that the addition of language concerning "commonly used for recreational purposes" proposed at 319.302(b)(1) was contradictory to statutory requirements stated in the TWC, §26.039(e), which directs the TCEQ to develop rules to require notification of spills that "may adversely affect a public or private source of drinking water."

The commission agrees with the comment received from Baker Botts L.L.P. and WEAT concerning §319.302(b)(1) and has removed all references to recreational uses.

Baker Botts L.L.P. also commented that the proposed notice revisions under §319.303(c) require new notices for certain spills potentially not connected to drinking water sources which, again, is contradictory to the statute requirement TWC, §26.039(e). The commenter recommended changing the language at §319.302(b)(3) to clarify that the notice is only required for 100,000 gallons or more if the "facility owner knows, or has reason to know, may adversely affect a public or private source of drinking water."

The rule, as currently written, requires notice for all spills of 100,000 gallons or more, irrespective of a facility owner's knowledge of the potential of the spill to adversely affect public or private sources of drinking water. As evidenced by the rule as written, the commission previously determined that, given the significant potential for any spill of 100,000 gallons or more of untreated wastewater to contaminate sources of drinking water, all such spills should be subject to notification under TWC, §26.039(e). The rule, as written, does not conflict with statute. Accordingly, no change to §319.302(b)(3) of the rule will be proposed at this time.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §26.039(f), which requires the commission by rule to specify the conditions under which a spill from a wastewater treatment or collection facility owned or operated by a local government must be reported to appropriate local government officials and local media, including the content of the notice; and TWC, §5.103 and

§5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement TWC, §§5.103, 5.105, and 26.039.

§319.302. Notification Requirements.

(a) The owner of a facility must designate a responsible individual to comply with this subchapter.

(b) In addition to the noncompliance notification to the commission required by §305.125(9) of this title (relating to Standard Permit Conditions) and any notification required under Chapter 327 of this title (relating to Spill Prevention and Control), the owner of a facility, through its responsible individual, must notify appropriate local government officials and the local media (see §319.301 of this title (relating to Definitions)) whenever one of the following types of spills occurs from the facility:

(1) a spill, regardless of volume, that the facility owner knows or has reason to know, will adversely affect a public or private source of drinking water;

(2) a spill with a volume of 50,000 gallons or more where one or more of the following conditions also exists:

(A) the spill occurs within 1/2-mile of a public or private source of drinking water;

(B) the spill occurs within 1/2-mile of a private drinking water well which is located within 1/2-mile of a public water supply well;

(C) the spill occurs within 1/2-mile up-gradient of a surface water intake of a public or private source of drinking water;

(D) the spill occurs in an active groundwater recharge area;

(E) the spill occurs up-gradient and within 1/2-mile of a karst terrain or shallow alluvial well that is a source of drinking water;

(3) a spill of 100,000 gallons or more.

(c) The responsible individual must issue the notice as quickly as possible, but not later than 24 hours after the facility becomes aware of the spill. The notice may be hand-delivered, sent by facsimile, e-mail, or by phone with follow-up written notice. The contents of the notice must comply with §319.303 of this title (relating to Notice to Local Officials and Local Media).

(d) Within 48 hours of providing notice to appropriate local government officials and local media, the responsible individual must provide to the commission regional office in whose region the spill occurred a copy of the notice, the date notice was provided to local officials and local media, and a list of notice recipients.

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-201101007

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2548

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER B. TRAINING AND

EDUCATION OF EMPLOYEES

31 TAC §3.21

The General Land Office (GLO) adopts amendments to §3.21, relating to Training and Education, without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11800), and the text will not be republished.

INTRODUCTION AND BACKGROUND

§3.21. Training and Education.

The adopted amendments to §3.21 incorporates the requirements of §3.22, relating to Employee Obligation; §3.23, relating to Training and Education Materials; and §3.24, relating to No Effect on At-Will Employment. Sections 3.22 - 3.24 are adopted for repeal in this issue of the *Texas Register*. The reorganization of Chapter 3, Subchapter B rules provides a more logical structure to the subchapter.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code §§31.051, 51.174 and 52.324, which provide the GLO with the authority to set and collect certain fees and to make and enforce rules consistent with the law.

STATUTES AFFECTED

Chapters 31, 32, 51 and 52 of the Texas Natural Resources Code are affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2011.

TRD-201100999

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs

General Land Office

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Proposal publication date: December 31, 2010

For further information, please call: (512) 475-1859

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31 TAC §§3.22 - 3.24

The General Land Office (GLO) adopts the repeal of §3.22, relating to Employee Obligation; §3.23, relating to Training and Education Materials; and §3.24, relating to No Effect On At Will Employment Status, without changes to the proposal as pub-

lished in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11801).

INTRODUCTION AND BACKGROUND

The GLO adopts the repeal of §§3.22 - 3.24 because these provisions will be rendered redundant by the adopted amendment to §3.21 published in this issue of the *Texas Register*. The repeal is a result of the quadrennial rule review of Chapter 3, Subchapter B, required by Texas Government Code §2001.039.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the adopted repeal.

STATUTORY AUTHORITY

The repeal is adopted under Texas Natural Resources Code §§31.051, 51.174 and 52.324, which provide the GLO with the authority to set and collect certain fees and to make and enforce rules consistent with the law.

STATUTES AFFECTED

Chapters 31, 32, 51 and 52 of the Texas Natural Resources Code are affected by the adopted repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2011.

TRD-201101000

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs

General Land Office

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Proposal publication date: December 31, 2010

For further information, please call: (512) 475-1859

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SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.30, §3.31

The General Land Office (GLO) adopts the amendments to §3.30, relating to Historically Underutilized Business Programs; and §3.31, relating to Fees, without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11802), and the text will not be republished.

INTRODUCTION AND BACKGROUND

The adopted amendments are the result of the quadrennial rule review of Chapter 3, Subchapter C, required by Texas Government Code §2001.039. The GLO adopts amendments to §3.30 to conform with nonsubstantive changes made to other rules in the Texas Administrative Code. The GLO adopts the amendments to §3.31, relating to Fees, in order to more logically organize the rule and update charges for services provided by the GLO.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code §§31.051, 51.174 and 52.324, which provide the GLO with

the authority to set and collect certain fees and to make and enforce rules consistent with the law.

STATUTES AFFECTED

Chapters 31, 32, 51 and 52 of the Texas Natural Resources Code are affected by the adopted amendments.

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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Trace Finley

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 29. BENEFITS

SUBCHAPTER A. RETIREMENT

34 TAC §§29.1, 29.7, 29.11, 29.15, 29.21, 29.24, 29.26

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 34 TAC §29.11 are not included in the print version of the Texas Register. The figures are available in the on-line version of the March 25, 2011, issue of the Texas Register.)

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts new §29.7 and amendments to §§29.1, 29.15, 29.21, 29.24, and 29.26 without changes to the text of the proposed rules as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9657). The board adopts amendments to §29.11, concerning actuarial tables, with changes to the text of the proposed rule as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9657).

The adopted new rule and rule amendments result from TRS' four-year rule review of Chapter 29, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code. Chapter 29 concerns benefits, and Subchapter A establishes policies related to service and disability retirement eligibility, the application process, the calculation of benefits, the payment plans available, and actuarial tables supporting the calculation of early age retirement reductions, optional payment plan reductions, and other benefits.

Section 29.1 concerns eligibility for service retirement. TRS amends the section in conformity with recently adopted amendments to TRS rule 34 TAC §51.12 regarding a member's eligibility to be grandfathered under former law for the purpose of taking advantage of certain benefit provisions. Those provisions concern qualification for certain early retirement reduction factors, computing service retirement benefits using a three-year

salary average rather than a five-year average, and eligibility to elect a partial lump-sum option upon meeting the Rule of 80.

Adopted new §29.7 concerns completion of the retirement application process. TRS adopts the new rule to establish a deadline for completing the application process for service or disability retirement. The adopted rule establishes a 12-month period for all required forms and information to be submitted to TRS in order to complete the application process and preserve the retirement date originally selected.

Section 29.11 concerns the actuarial tables furnished by TRS' actuary for computing benefits. In addition to some minor wording changes, TRS adopts the actuarial tables as part of the rule itself rather than by reference. When the rule was first adopted, restrictions by the Secretary of State's office governing filing and publication of material in the *Texas Register* affected how the tables were addressed in §29.11. As technology has evolved, TRS now may include longer tables under a link to an "Attached Graphic" as part of the rule itself. The adopted change would permit members viewing this rule online also to view the actual tables instead of having to request the tables from TRS. Additionally, the adopted amendments add notes to the tables to clarify the applicability of certain parts of the tables in light of legislative changes enacted in 2005. The legislation creating grandfathered member status changed the applicability of certain parts of the tables to members not grandfathered. Also, the legislation changed normal age retirement eligibility for members joining TRS on or after September 1, 2007, thus creating a new type of early age reduction not previously reflected in the actuarial tables. Also, with respect to members joining on or after September 1, 2007, the legislation modified the early age reduction for members with thirty or more years of service credit but not yet eligible for normal age retirement. Other adopted amendments consisting of explanatory notes update the applicability of various factor tables in order to present the early age reductions in a clearer and more comprehensive manner.

The board adopts non-substantive changes to §29.11 as published in the *Texas Register*. First, staff proposes that the factor tables adopted as part of the rule be presented as four separate figures instead of one to make it easier to use the lengthy tables online (Early Age Reduction Factors, Service Retirement Option Factors, Disability Retirement Option Factors, and Reserve Transfer Factors). The board also adopts amendments reorganizing the rule text to support the new presentation of the figures. Second, in the referenced figures, the board adopts amendments adding notes to the cover sheets for the sets of factors to show when the board last took action on them.

Section 29.15 concerns termination of employment. TRS adopts minor changes to the section to correct grammar and punctuation.

Section 29.21 concerns beneficiary tables. The adopted amendment to the section updates a reference to a renumbered statute.

Section 29.24 concerns purchase of credit. The adopted amendments to the section delete language relating to the Internal Revenue Code §415(c) limitations on annual contributions by a member. The limitations still apply but recent amendments to TRS rules 34 TAC §§29.50, 29.51, and 29.55 adequately address the limitations, and the deletion of language addressing the limitations in other rules will reduce repetition.

Section 29.26 concerns the discontinuance of disability benefits. TRS adopts amendments to the section to clarify when a disability retiree is considered restored to active service and no longer

eligible for a monthly disability retirement benefit. A disability retiree would be required to actually return to a TRS-eligible position instead of simply notifying TRS of an intention to do so. Additionally, under the adopted amendments, a disability retiree who refuses to submit to a required medical examination or provide documents relating to a required examination for more than a year would be restored to active service.

Statutory Authority: The amendments and new rule are adopted under §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, for the administration of the funds of the retirement system, and for the transaction of the business of the board.

Cross-Reference to Statute: The adopted amendments to §29.1 affect the following sections of the Government Code: §§822.003, 822.004, 822.006, 823.501, 824.202, 824.203, and 824.2045. Adopted new §29.7 affects §824.002 of the Government Code. The adopted amendments to §29.11 affect the following sections of the Government Code: §§824.202, 824.204, 824.308, 824.402, and 824.405. The adopted amendments to §29.15 affect the following sections of the Government Code: §§824.002, 824.005, 824.202, and 824.602. The adopted amendments to §29.21 affect §824.1013 of the Government Code. The adopted amendments to §29.24 affect §824.304 of the Government Code. The adopted amendments to §29.26 affect §824.307 and §824.602 of the Government Code.

§29.11. *Actuarial Tables.*

(a) Actuarial tables furnished by the TRS actuary of record will be used for computation of benefits. Factors for ages or types of annuities not included in the tables will be computed from the same data by the same general formulas.

(b) The Teacher Retirement System adopts the actuary's June 1997 early age reduction factors based on 8.0% interest, with modifications to the early age reduction factor table to reflect the amendment of Government Code §824.202 effective September 1, 2005, including the repeal of §824.202(c). These actuarial tables shall be effective beginning September 1, 1997, except for the early age reduction factor modifications, which shall be effective September 1, 2005. The factor tables are as follows:
Figure: 34 TAC §29.11(b)

(c) The Teacher Retirement System adopts the actuary's June 1997 factors for service retirement options based on 8.0% interest. These actuarial tables shall be effective beginning September 1, 1997. The factor tables are as follows:
Figure: 34 TAC §29.11(c)

(d) The Teacher Retirement System adopts the actuary's June 1997 factors for disabled member retirement options based on 8.0% interest. These actuarial tables shall be effective beginning September 1, 1997. The factor tables are as follows:
Figure: 34 TAC §29.11(d)

(e) The Teacher Retirement System adopts the actuary's reserve transfer factors effective beginning September 1, 1991, based on 8.0% interest. The reserve transfer factor tables are as follows:
Figure: 34 TAC §29.11(e)

(f) The board of trustees may change the tables or adopt new tables from time to time by amending this section; provided, however, that any such change does not result in any retiree or member eligible for service retirement with an unreduced annuity as of the date of the change receiving a smaller benefit than the benefit computed immediately before the change.

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 B. DEATH BEFORE
RETIREMENT**

34 TAC §29.34

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §29.34 concerning death and survivor benefits without changes to the text as proposed in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9659). The adopted amendment results from TRS' four-year rule review of Chapter 29, Subchapter B, in Title 34, Part 3, of the Texas Administrative Code. Chapter 29 addresses retirement plan benefits, including service and disability retirement, active member death benefits, deferred retirement option plan (DROP), partial lump sum option (PLSO), and proportionate retirement. Subchapter B of Chapter 29 establishes policies relating to member death and survivor benefits when a TRS member dies before service or disability retirement.

Section 29.34 concerns events affecting payment of death and survivor benefits. TRS adopts deletion of a requirement in the rule that a beneficiary select the benefit plan payment within 60 days after TRS provides the claim information. TRS regularly extends this period.

No comments on the proposal were received.

Statutory Authority: The amendment is adopted under the following sections of the Government Code: §824.402, which authorizes the board to prescribe by rule the manner of payment of benefits upon the death of an active member under §824.402; and §825.102, which authorizes the board to adopt rules for eligibility for membership, for the administration of the funds of the retirement system, and for the transaction of the business of the board.

Cross-reference to Statute: The adopted amendment to §29.34 affects Chapter 824, Subchapter E, of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. POSTRETIREMENT INCREASES

34 TAC §29.40

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts the repeal of Subchapter C and the lone section in that subchapter, §29.40, both of which concern postretirement increases. The repeal is adopted without changes to the proposed repeal as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9660). The adopted repeal results from TRS' statutory four-year rule review of Chapter 29, Subchapter C, in Title 34, Part 3, of the Texas Administrative Code. Chapter 29 addresses retirement plan benefits, including service and disability retirement, active member death benefits, deferred retirement option plan (DROP), partial lump-sum option (PLSO), and proportionate retirement. Subchapter C reflects legislative changes made in 1981 with respect to the recalculation of retirement annuities to reflect cost of living adjustments.

Section 29.40 concerns the constructive election of recalculated benefits by eligible retirees and beneficiaries under the 1981 legislation. Adopted by TRS to administer that legislation, §29.40 presumed that the recalculation was elected if it resulted in a greater benefit than the percentage increase provided by the same legislation, unless the retiree or beneficiary waived the recalculation in writing. TRS adopts the repeal of Subchapter C and §29.40 because all the elections and recalculations associated with the 1981 legislation have been implemented.

No comments on the proposed repeal were received.

Statutory Authority: The repeal of Subchapter C and §29.40 are adopted under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, for the administration of the funds of the retirement system, and for the transaction of the business of the board.

Cross-reference to Statute: No other codes, articles, or sections are affected.

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SUBCHAPTER E. DEFERRED RETIREMENT OPTION PLAN

34 TAC §29.63

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts an amendment to §29.63, concerning the Deferred Retirement Option Plan (DROP) and

the deadline to purchase special service credit as a DROP participant, without changes to the text of the proposed rules as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9660). The adopted amendments result from TRS' statutory four-year rule review of Chapter 29, Subchapter E, in Title 34, Part 3, of the Texas Administrative Code (TAC). Chapter 29 addresses retirement plan benefits, including service and disability retirement, active member death benefits, DROP, partial lump sum option, and proportionate retirement. Subchapter E of Chapter 29 implements the DROP program. A member who elected to participate in DROP ceased to accrue additional retirement benefits during years of DROP participation. Instead, TRS transferred amounts representing a portion of the accrued retirement benefit into a DROP account for the member. The member can receive the accumulated amount including interest at retirement. DROP is no longer open to new participants; the deadline for an election to participate in DROP was December 31, 2005, but TRS retains rules to administer this benefit feature for members who elected DROP participation before the deadline and have not yet retired.

The amendment adopted to §29.63 clarifies references to applicable provisions in the rule itself relating to foreclosed opportunities enacted by the legislature for members to elect to discontinue their DROP participation. Additionally, TRS adopts deletion of language in subsection (d) relating to the Internal Revenue Code §415(c) limitations on annual contributions by a member. The limitations still apply, but in 2008 TRS amended its rules at 34 TAC §§29.50, 29.51, and 29.55 to adequately address those limitations. Deleting redundant language addressing the same limitations in §29.63 reduces unnecessary repetition.

No comments on the proposal were received.

Statutory Authority: The amendment is adopted under §825.102 of the Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to Statute: The amendment adopted to §29.63 relates to §824.803 of the Government Code, which concerns the computation of a DROP participant's service, and §824.805 of the Government Code, which concerns the legislative windows for electing to discontinue DROP participation.

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SUBCHAPTER F. PARTIAL LUMP-SUM PAYMENT

34 TAC §29.70

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §29.70, con-

cerning the distribution of a partial lump-sum option payment, without changes to the text of the proposed rule as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9661). The adopted amendments result from TRS' four-year rule review of Chapter 29, Subchapter F, in Title 34, Part 3, of the Texas Administrative Code. Chapter 29 addresses retirement plan benefits, including service and disability retirement, active member death benefits, deferred retirement option plan, partial lump sum option, and proportionate retirement. Subchapter F of Chapter 29 implements statutory provisions concerning the partial lump sum option. The rules in the subchapter establish policies and procedures for distributing a partial lump-sum option payment, provide factor tables for calculating the actuarially reduced annuity to reflect the selection of a partial lump-sum option, and implement eligibility requirements for the partial lump-sum option.

The adopted amendments to §29.70 clarify and provide additional notice that a member's election of a partial lump-sum option or failure to elect a partial lump-sum option may not be changed after the first annuity payment or the due date of the payment, whichever is later. The deadline also applies to the amount of the lump sum the member chooses to receive upon electing the partial lump-sum option. (A member electing the partial lump-sum option may choose to receive a lump sum equal to 12, 24, or 36 months of the standard service retirement annuity the member would have received if it were not actuarially reduced to reflect the lump-sum distribution.)

The adopted amendments reflect TRS administrative and Board of Trustees' decisions interpreting and applying the related enabling statute, §824.2045 of the Government Code, which allows the partial lump-sum option to be elected only once and only by a member; a retiree is not a member. Further, the adopted amendments are consistent with other provisions regarding a member's deadline to make, change, or revoke a decision regarding retirement or annuity payment options or plans. Under §824.201 of the Government Code, a member may revoke the member's retirement application or make, revoke, or change the available selection of an optional service retirement annuity before TRS makes the first annuity payment or the first annuity payment becomes due. Similarly, §824.206 of the Government Code provides that a retiree may not change the retiree's choice of service retirement annuity payment plans after the first payment has been made or has become due.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under §824.2045(h) of the Government Code, which authorizes the Board to adopt rules for the implementation of the partial lump-sum option under §824.2045, and §825.102 of the Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to Statute: The adopted amendments implement §824.2045 of the Government Code.

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SUBCHAPTER G. PROPORTIONATE RETIREMENT

34 TAC §29.81, §29.82

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts new §29.81 and §29.82, concerning the determination of eligibility and calculation of final average salary by TRS under the Proportionate Retirement Program, without changes to the text of the proposed rules as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9662). The adopted new rules result from TRS' statutory four-year rule review of Chapter 29, Subchapter G, in Title 34, Part 3, of the Texas Administrative Code. Chapter 29 addresses retirement plan benefits, including service and disability retirement, active member death benefits, deferred retirement option plan, partial lump sum option, and proportionate retirement. Subchapter G concerns the Proportionate Retirement Program.

Adopted new §29.81 concerns the determination of TRS service retirement eligibility under the Proportionate Retirement Program. The new rule clarifies that, to meet TRS service retirement eligibility, TRS members may combine their TRS service with that credited in other public retirement systems under the Proportionate Retirement Program even if they do not simultaneously retire from any other system when they retire from TRS.

Adopted new §29.82 concerns the calculation of final average salary for members eligible for TRS service retirement under the Proportionate Retirement Program. The adopted new rule addresses the situation in which a TRS member is eligible to retire from TRS under the Proportionate Retirement Program but has fewer years of service credit than is otherwise required under the applicable formula to compute final average salary. The new rule clarifies that the final salary average of a member eligible to retire from TRS under the Proportionate Retirement Program is computed using the salaries for the number of years credited in TRS.

No comments on the proposal were received.

Statutory Authority: The new rules are adopted under the following statutes: §803.401(a) of the Government Code, which authorizes the TRS Board of Trustees (board) to adopt rules it finds necessary to implement the Proportionate Retirement Program provided by Chapter 803 of the Government Code; and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, for the administration of the funds of the retirement system, and for the transaction of the business of the board.

Cross-reference to Statute: The adopted new rules affect Chapter 803 of the Government Code, concerning the Proportionate Retirement 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.

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CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

34 TAC §§31.13 - 31.15, 31.18, 31.19

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §31.13, concerning substitute service after retirement, and §31.14, concerning one-half time employment after retirement, with changes to the text of the proposed rules as published in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9843). The board adopts amendments to three other rules concerning exceptions to employment after retirement limitations without changes to the text of the proposed rules as published in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9843): §31.15, concerning the six-month exception, §31.18, concerning the bus driver exception, and §31.19, concerning the faculty member of professional nursing program exception.

The adopted amendments result from TRS' four-year rule review of Chapter 31, Subchapter B, in Title 34, Part 3, of the Texas Administrative Code (TAC). Chapter 31 addresses the opportunities and limitations on employment with a TRS-covered employer after retirement and the limitations on the amount of compensation a disability retiree may receive from any source after retirement without forfeiting the disability retirement benefit. In general, a retiree is not entitled to a service or disability retirement benefit for any month in which the retiree is employed by a TRS-covered employer or a third party entity providing personnel to a TRS-covered employer unless the employment meets the requirements for one of the exceptions provided by law to this general rule. Chapter 31 provides TRS-covered employers and retirees with more detailed information and instructions on these exceptions to the general rule than provided in the law. In addition, Chapter 31 establishes the circumstances under which a TRS-covered employer must pay a surcharge to the pension plan for hiring a retiree to work in a TRS-covered position. Subchapter B of Chapter 31 addresses employment after service retirement.

Section 31.13 concerns exceptions relating to substitute service. TRS adopts changes in §31.13(d) that more closely track the language of the statute that authorizes combining substitute service and one-half time employment in the same calendar month, §824.602 of the Government Code. The adopted amendments to §31.13(d) address restrictions on post-retirement employment that combines one-half time and substitute work in the same

calendar month. The board adopts amended §31.13(d) with changes to the proposed rule to indicate that, starting September 1, 2011, substitute service and one-half time employment may be combined in the same calendar month without forfeiting the annuity only if the total number of days worked in both positions does not exceed the number of half-time workdays available for that month. The board amends §31.13(e) to include a new paragraph (3) that refers to the exception for faculty members of professional nursing programs in 34 TAC §31.19, a reference that TRS inadvertently omitted from the prior version of the rule. The board amends §31.13(f) to delete an unneeded reference to the effective date for disability retirement under 34 TAC §29.21.

Section 31.14 concerns the exception for one-half time employment. The board adopts amendments to address the limits on employment after retirement when combining one-half time employment and substitute work in the same calendar month and delete references to authorization and effective dates occurring in the past that are no longer needed. The board adopts amended §31.14(d) with changes to the proposed rule to indicate that, starting September 1, 2011, one-half time employment and substitute service may be combined in the same calendar month without forfeiting the annuity only if the total number of days worked in both positions does not exceed the number of half-time workdays available for that month. The board also adopts a new subsection (e) to clarify the treatment of paid leave in calculating the amount of time available for work under this exception.

Section 31.15 concerns the six-month exception. The adopted amendments to this section eliminate references to dates that are obsolete and distracting.

Section 31.18 concerns the bus driver exception. The adopted amendments to this section clarify that a retiree who retired before September 1, 2005 and is working under the bus driver exception may work as much as full time on other work in addition to driving the bus.

Section 31.19 concerns the exception for faculty members of professional nursing programs. The adopted amendments to this section eliminate references to dates that are obsolete and distracting.

No comments were received concerning the proposed amendments.

Statutory Authority: The amendments are adopted under §824.601(f) of the Government Code, which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Government Code concerning loss of benefits on resumption of service, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The adopted amendments affect Chapter 824, Subchapter G, of the Government Code.

§31.13. Substitute Service.

(a) Any person receiving a service retirement annuity who retired after January 1, 2001, may work in a month as a substitute in a public educational institution without forfeiting the annuity payment for that month, provided the pay for work as a substitute does not exceed the daily rate of substitute pay established by the employer.

(b) Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit

of the institution or the retiree was first employed by the third party entity before May 24, 2003, and may not be combined with the substitute service exception without forfeiting the annuity payment except as provided in this chapter.

(c) The exception described in this section is not available to retirees who have elected the exception described in §31.15 of this chapter (relating to Six-Month Exception).

(d) The exception described in this section and the exception for one-half time employment described in §31.14 of this chapter (relating to One-half Time Employment) may be used during the same school year. If the substitute service and the one-half time employment occur in the same calendar month, the total amount of time that the retiree works in both positions may not exceed the amount of time available that month for work on a one-half time basis. Beginning September 1, 2011 and thereafter, the exception for substitute service under this section and the exception for one-half time employment under §31.14 of this chapter may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed the number of days available for that month for work on a one-half time basis.

(e) In addition to the service described in subsection (d) of this section, substitute service under this exception may be combined in the same school year with work under the following exceptions without loss of annuity provided the requirements for work under each exception are met:

(1) acute shortage area as described in §31.16 of this chapter (relating to Acute Shortage Area Exception);

(2) principal or assistant principal as described in §31.17 of this chapter (relating to Principal or Assistant Principal Exception); and

(3) faculty member of a professional nursing program as described in §31.19 of this chapter (relating to Faculty Member of Professional Nursing Program Exception).

(f) The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

(g) A retiree who reports for duty as a daily substitute during any day and works any portion of that day shall be considered to have worked one day.

§31.14. *One-half Time Employment.*

(a) A person who is receiving a service retirement annuity may be employed on a one-half time basis without forfeiting annuity payments for the months of employment. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) Except as provided in subsection (e) of this section, one-half time employment measured in clock hours shall not in any month exceed one-half of the time required for a similar full time position in a calendar month or 92 clock hours, whichever is less. Paid time-off is employment for purposes of this section and reduces the number of hours available to work in the calendar month in which it is taken. Because the time required for a full time position may vary from month to month, determination of one-half time will be made on a calendar month basis. If an employer is scheduled to be closed for business during all or part of a calendar month, the amount of time available for

one-half time employment is reduced by the number of business days the employer is closed. Actual course instruction in state-supported colleges (including junior colleges), universities, and public schools shall not exceed during any calendar month one-half the normal load for full-time employment at the same teaching level.

(c) For bus drivers, "one-half time" employment shall in no case exceed 12 days in any calendar month, unless the retiree qualifies for the bus driver exception in §31.18 of this chapter (relating to Bus Driver Exception). Work by a bus driver for any part of a day shall count as a full day for purposes of this section.

(d) This exception and the exception for substitute service may be used during the same school year provided the substitute service and one-half time employment do not occur in the same month. Effective September 1, 2003, this exception and the exception for substitute service may be used during the same calendar month without forfeiting the annuity only if the total amount of time that the retiree works in those positions in that month does not exceed the amount of time per month for work on a one-half time basis. Beginning September 1, 2011 and thereafter, the exception for one-half time employment under this section and the exception for substitute service under §31.13 of this chapter (relating to Substitute Service) may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed the number of days available for that month for work on a one-half time basis.

(e) Paid time off, including sick leave, vacation leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in determining the total amount of time available to work in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

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SUBCHAPTER C. EMPLOYMENT AFTER DISABILITY RETIREMENT

34 TAC §§31.31 - 31.34

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §§31.31 - 31.34, concerning employment after disability retirement, without changes to the text of the proposed rules as published in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9846). The adopted amendments result from TRS' four-year rule review of Chapter 31, Subchapter C, in Title 34, Part 3, of the Texas Administrative Code. Chapter 31 addresses the opportunities and limitations on employment with a TRS-covered employer after retirement and the limitations on the amount of compensation a disability retiree may receive from any source after retirement without forfeiting the disability retirement benefit. In

general, a retiree is not entitled to a service or disability retirement benefit for any month in which the retiree is employed by a TRS-covered employer or a third party entity providing personnel to a TRS-covered employer unless the employment meets the requirements for one of the exceptions provided by law to this general rule. Chapter 31 provides TRS-covered employers and retirees with more detailed information and instructions on these exceptions to the general rule than provided in the law. In addition, Chapter 31 establishes the circumstances under which a TRS-covered employer must pay a surcharge to the pension plan for hiring a retiree to work in a TRS-covered position. Subchapter C of Chapter 31 addresses employment after disability retirement.

Section 31.31 concerns employment resulting in forfeiture of disability retirement. The adopted amendments to the section add a reference to the exception for working as a faculty member of a professional nursing program that was inadvertently left out after the exception was authorized in 2005.

Section 31.32 concerns the exception for one-half time employment up to 90 days by a disability retiree. The adopted amendments to the section clarify how much a disability retiree can work when combining one-half time employment and substitute service. The adopted amendments also delete references to effective dates that occurred in the past and are no longer needed.

Section 31.33 concerns the exception for substitute service up to 90 days by a disability retiree. The adopted amendments to the section clarify that a disability retiree is limited to 90 days of substitute service or 90 days of combined substitute service and one-half time employment.

Section 31.34 concerns the exception for employment of a disability retiree for up to three months on a one-time only trial basis. The adopted amendments to the section add a subsection to clarify that the trial work period may span two school years. This adopted additional language is consistent with current staff interpretation and administration.

No comments were received concerning the proposed amendments.

Statutory Authority: The amendments are adopted under §824.601(f) of the Government Code, which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Government Code concerning loss of benefits on resumption of service, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The adopted amendments affect Chapter 824, Subchapter G, of the Government Code.

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SUBCHAPTER D. EMPLOYER PENSION SURCHARGE

34 TAC §31.41

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §31.41, concerning the employer pension surcharge on retirees returning to work in a TRS-covered position, without changes to the text of the proposed rule as published in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9848). The adopted amendments result from TRS' four-year rule review of Chapter 31, Subchapter D, in Title 34, Part 3, of the Texas Administrative Code. Chapter 31 addresses the opportunities and limitations on employment with a TRS-covered employer after retirement and the limitations on the amount of compensation a disability retiree may receive from any source after retirement without forfeiting the disability retirement benefit. In general, a retiree is not entitled to a service or disability retirement benefit for any month in which the retiree is employed by a TRS-covered employer or a third party entity providing personnel to a TRS-covered employer unless the employment meets the requirements for one of the exceptions provided by law to this general rule. Chapter 31 provides TRS-covered employers and retirees with more detailed information and instructions on these exceptions to the general rule than provided in the law. In addition, Chapter 31 establishes the circumstances under which a TRS-covered employer must pay a surcharge to the pension plan for hiring a retiree to work in a TRS-covered position. Subchapter D of Chapter 31 addresses that employer pension surcharge.

Section 31.41 concerns the return to work employer pension surcharge. The adopted amendments to the section delete obsolete references to past effective dates and events relating to certain emergency conditions that have been resolved with respect to the employer pension surcharge. Those references are no longer necessary to administer the rule and are potentially confusing.

No comments were received concerning the proposed amendments.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the board to adopt rules for the administration of the funds of the system and the transaction of business of the board.

Cross-Reference to Statute: The adopted amendments affect §825.4092 of the Government Code.

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CHAPTER 35. PAYMENTS BY TRS

34 TAC §35.1, §35.2

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §35.1, concerning payment errors, and §35.2, concerning rollovers from TRS, without changes to the text of the proposed rules as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9663). The adopted amendments result from TRS' four-year rule review of Chapter 35 in Title 34, Part 3, of the Texas Administrative Code. Chapter 35 generally addresses payments by TRS, including the correction of payment errors and the payment of eligible rollover distributions from TRS.

Section 35.1 concerns computation errors by TRS in determining a payment amount. The rule implements TRS' authority to correct benefit processing errors, including errors in TRS participant files, and to adjust future payments accordingly. Section 35.1 previously just referred to correcting an error made in paying an alternate payee who elects payment in lieu of a Qualified Domestic Relations Order (QDRO) under §804.005 of the Government Code. The adopted amendments clarify in subsection (a) that an error in TRS' making a payment in connection with a QDRO under Chapter 804 of the Government Code could be corrected pursuant to the rule. The adopted amendments also clarify in a new subsection (f) that the failure to timely notify TRS of an annuitant's death is not considered an error under the rule or the related statutes in the Government Code, §802.1024 and §802.1025. The recovery or payment-adjustment periods for TRS to correct the kind of payment "errors" intended under the rule generally are too brief in the case of untimely death notices. The administrative deadline to institute recovery of an overpayment (90 days) and the limitations period on how many years of overpayments TRS may recover (3 years before discovery of the overpayment) because of a payment error are often too short to enable TRS to collect overpayments made after an annuitant dies and the death is not timely reported to or discovered by TRS.

Section 35.2 allows an eligible distributee to elect to have any portion of an eligible rollover distribution made by TRS paid directly to an eligible retirement plan, a traditional or Roth IRA, or an individual retirement annuity. The adopted amendments specify that any foreign bank to which the distributee directs TRS to make the rollover payment must satisfy related requirements under the federal tax code. The adopted amendments also align the TRS rule with the tax code terminology.

No comments were received concerning the proposed amendments

Statutory Authority: The amended rules are adopted under §825.102 of the Government Code, which authorizes the TRS Board of Trustees (board) to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board. The amendments to §35.2 are also adopted under §825.506 of the Government Code, which authorizes the board to adopt rules to modify the retirement benefit plan to the extent necessary for it to be a qualified plan under federal law.

Cross-reference to Statute: The adopted amendments to §35.1 affect Chapter 804 of the Government Code and §802.1024 and §802.1025 of the Government Code. The adopted amendments to §35.2 affect §825.509 of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 39. PROOF OF AGE

34 TAC §39.1

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §39.1, concerning the establishment of date of birth, without change to the text of the proposed rule as published in the October 29, 2010 issue of the *Texas Register* (35 TexReg 9665). The adopted amendments result from TRS' four-year rule review of Chapter 39 in Title 34, Part 3, of the Texas Administrative Code (TAC). Chapter 39 and the single rule in that chapter, §39.1, address the acceptable methods by which an individual may establish his or her date of birth with TRS. The adopted amendments in §39.1 update the citation to the statutory provisions governing the delayed registration of a birth certificate.

No comments on the proposal were received.

Statutory Authority: The amended rule is adopted under §825.102 of the Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to Statute: The adopted rule affects Chapter 192, Subchapter B, of the Health and Safety Code. The adopted rule also affects age-related benefit provisions of Chapter 824, Subtitle C of Title 8 of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.10

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §41.10, concerning eligibility to enroll in the retiree health benefit plan (TRS-Care), without changes to the text of the proposed rule as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9665). The adopted amendments result from TRS' four-year rule review of Chapter 41, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code. Chapter 41 generally addresses the health benefit programs administered by TRS as trustee of those programs and the responsibilities of school districts that do not participate in the active employee health benefit plan (TRS-ActiveCare) to determine the comparability of the health coverage offered to their respective employees. Subchapter A concerns TRS-Care.

The board adopted amendments to §41.10 to clarify the types of service credit that may be purchased for equivalent or special service credit in establishing eligibility to enroll in TRS-Care under the Rule of 80 or with 30 or more years of service credit in the retirement system. The adopted amendments also consolidate into §41.10 references in other TRS rules concerning service credit at 34 TAC §§25.161, 25.162, 25.163, and 25.164, rules that in part currently address whether a given type of service credit may be used to establish eligibility for TRS-Care. The board has recently amended §§25.161, 25.162, 25.163, and 25.164 to delete references to §41.10 in those sections because amended §41.10 addresses them. None of the adopted amendments to §41.10 represent substantive changes to current policy.

No comments were received concerning the proposed amendments.

Statutory Authority: The amendments to §41.10 are adopted under §1575.052 of the Insurance Code, which authorizes the TRS Board of Trustees to adopt rules it considers necessary to implement and administer the TRS-Care program.

Cross-Reference to Statute: The adopted amendments affect Chapter 1575 of the Insurance Code, which provides for the establishment and administration of TRS-Care.

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 C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §§41.30, 41.33, 41.34, 41.36, 41.38, 41.39, 41.45, 41.50, 41.51

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §§41.30, 41.33, 41.34, 41.36, 41.38, 41.39, 41.45, 41.50, and 41.51, con-

cerning the active employee health benefit plan (TRS-ActiveCare), without changes to the text of the proposed rules as published in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9849).

The adopted amendments result from TRS' four-year rule review of Chapter 41, Subchapter C, in Title 34, Part 3, of the Texas Administrative Code. Chapter 41 generally addresses the health benefit programs administered by TRS as trustee of those programs and the responsibilities of school districts that do not participate in the active employee health benefit plan (TRS-ActiveCare) to determine the comparability of the health coverage offered to their respective employees. Subchapter C addresses various aspects of TRS-ActiveCare, including elections to become a participating entity in TRS-ActiveCare, eligibility to enroll in TRS-ActiveCare, enrollment periods, effective dates of coverage, termination dates of coverage, and appeals relating to claims and to eligibility.

Section 41.30 concerns participation in TRS-ActiveCare by school districts, other educational districts, charter schools, and regional education service centers. The board adopted an amendment to §41.30(f)(2), which addresses an election by an eligible charter school to participate in TRS-ActiveCare. The adopted amendment clarifies that an eligible charter school electing to participate in TRS-ActiveCare must comply with §41.30(a), regardless of the date upon which the eligible charter school wants to become a participating entity in TRS-ActiveCare.

Section 41.33 contains definitions applicable to the TRS-ActiveCare program. The adopted amendment to §41.33(1)(B) clarifies that this subsection applies only to grandchildren. The second adopted amendment to paragraph (1)(B) is needed because the federal income tax year and the TRS-ActiveCare plan year do not coincide. This adopted amendment to paragraph (1)(B) clarifies that, in order for the grandchild to qualify as a dependent under this subsection during a given portion of the TRS-ActiveCare plan year, the grandchild will need to be separately reported as a dependent of the full-time or part-time employee for federal income tax purposes during the same period of time. For example, in order for a full-time or part-time employee to validly enroll a grandchild as a dependent under paragraph (1)(B) during the period from September 1, 2010, through December 31, 2010, then the full-time or part-time employee must report the grandchild as a dependent for the 2010 tax year. Similarly, in order for the full-time or part-time employee to validly enroll a grandchild as a dependent under this paragraph (1)(B) during the period from January 1, 2011 through August 31, 2011, the full-time or part-time employee must report the grandchild as a dependent for the 2011 tax year.

Section 41.34 addresses eligibility to be enrolled in TRS-ActiveCare. The adopted amendment in §41.34(3) replaces obsolete terminology. The adopted amendment in §41.34(8) addresses special enrollment provisions under TRS-ActiveCare. As permitted by federal law, TRS-ActiveCare has annually elected to exempt itself from the special enrollment provisions of the Health Insurance Portability and Accountability Act of 1996, commonly referred to as HIPAA. This annual election has allowed TRS-ActiveCare to define its own special enrollment provisions, many of which have been in place since the beginning of the program. These TRS-ActiveCare special enrollment provisions have historically been described not only in TRS-ActiveCare plan documents (e.g., the annual Benefits Booklets), but also in certain TRS-ActiveCare rules (e.g., TRS rules 34 TAC §41.34(8)

and §41.39(a)(1)). Since legislative changes made by the federal government to HIPAA, as well as changes made by TRS-ActiveCare itself, raise the possibility of inconsistencies between the TRS-ActiveCare special enrollment provisions described in TRS-ActiveCare documents and those described in the TRS-ActiveCare rules, specific references to HIPAA in both §41.34(8) and §41.39(a)(1) are removed from all the TRS-ActiveCare rules. TRS continues to provide appropriate notice of TRS-ActiveCare special enrollment provisions to enrollees via the Benefits Booklets and other types of notices.

Section 41.36 concerns enrollment periods for TRS-ActiveCare. The adopted amendment in §41.36(d) conforms with the substance and rationale for the adopted amendment to §41.34(8), as explained immediately above in this preamble.

Section 41.38 concerns the termination date of coverage under the TRS-ActiveCare program. TRS adopts a new paragraph (7) in §41.38(a) and rennumbers the remaining paragraphs accordingly. This adopted amendment addresses the termination date of a covered individual who voluntarily drops coverage under TRS-ActiveCare. The termination becomes effective at the end of the month in which TRS-ActiveCare receives notice that the individual has chosen to voluntarily drop coverage. This timing is consistent with the other provisions of §41.38(a).

Section 41.39 addresses TRS-ActiveCare coverage for individuals changing employers during the plan year. The adopted amendment in §41.39(a)(1) conforms with the substance and rationale for the adopted amendment to §41.34(8), as explained above in this preamble.

Section 41.45 concerns required information from large school districts. The adopted amendment to §41.45(a) establishes a more generous timeframe within which a large school district must submit the information required by this subsection.

Section 41.50 addresses appeals relating to claims. Currently, an individual who wants to appeal a denied payment of a claim or other benefit initially goes through an appeal process conducted by the administering firm for TRS-ActiveCare. For instance, Blue Cross and Blue Shield of Texas (BCBSTX), the existing health plan administrator for TRS-ActiveCare, conducts the initial appeal process for medical claims. Once the individual has exhausted the appeal process conducted by the administering firm, the individual can file an appeal with TRS. The adopted amendments to subsections (b) and (p) of §41.50 contemplate the shifting of the entire claims appeal process to the administering firm. The implementation date of the shift is September 1, 2011, for a claim or other benefit with all dates of service or all denials for services occurring on or after that date.

The board adopts the amendments to §41.50 in anticipation of the implementation of recently enacted federal health care legislation. The Patient Protection and Affordable Care Act, signed into law on March 23, 2010, along with the Health Care and Education Affordability Reconciliation Act of 2010, signed into law on March 30, 2010, embody the sweeping federal health care legislation enacted this year. It is anticipated that the appeals and external review rules of the new federal health laws, hereinafter referred to jointly as the "PPACA," will become applicable to TRS-Active Care on September 1, 2011, the beginning of the next TRS-ActiveCare plan year. The PPACA contains a number of new benefit appeal requirements that are applicable to health plans. Also, for the first time, TRS-ActiveCare will be required to provide external reviews for benefit denials and will be required to comply with existing U.S. Department of Labor claims rules

that heretofore have not applied to public health benefit plans, like TRS-ActiveCare, that are not subject to the Employee Retirement Income Security Act (ERISA). TRS-ActiveCare would incur additional costs if the program were to deploy its internal staff and resources in administering these imminent requirements for benefit appeals. Therefore, these costs may now be avoided by shifting to one or more business associates the entire benefits appeal processes, including the handling of external reviews. This shift will also allow TRS-ActiveCare to take advantage of the appeal processes already established by one or more of its business associates that service ERISA clients. These established appeal processes meet the existing Department of Labor claims rules and are being adjusted to meet the new requirements under the PPACA. One or more business associates have also agreed to undertake the entire appeal process mandated by the PPACA at no additional charge to TRS-ActiveCare, beginning with claims or other benefits with dates of service or denials for services that occur on or after September 1, 2011. Further, the adopted amendments to §41.50 entail no additional cost to TRS-ActiveCare enrollees who may appeal the denial of a claim or benefit under the proposed process. Initial eligibility appeals continue to be handled by TRS pursuant to rule 34 TAC §41.51, which establishes the TRS appeal process for denials of eligibility to enroll in TRS-ActiveCare. Such appeals are not subject to the new appeals and external review rules of the PPACA.

To reflect the system's current organizational chart, additional adopted amendments to both §41.50 and §41.51 designate the Chief Financial Officer to appoint members to the respective claims and eligibility appeals committees if the primary designated position, the Deputy Director, is vacant. Under the adopted amendments, the Chief Financial Officer replaces the Chief Operating Officer, a position which has been discontinued.

No comments were received concerning the proposed amendments.

Statutory Authority: The amendments are adopted under §1579.052 of the Insurance Code, which authorizes the board, as trustee of the TRS-ActiveCare health benefits program, to adopt rules relating to the program as necessary and to adopt rules to administer the program, including rules relating to the adjudication of claims and expelling participants from the program for cause.

Cross-Reference to Statute: The adopted amendments affect Chapter 1579 of the Insurance Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 43. CONTESTED CASES

34 TAC §§43.1, 43.3 - 43.6, 43.9, 43.10, 43.12, 43.16, 43.37, 43.44, 43.45

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §§43.1, 43.3 - 43.6, 43.9, 43.10, 43.12, 43.16, 43.37, 43.44, and 43.45, concerning contested cases relating to the TRS pension plan, without changes to the text of the proposed rules as published in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9853).

The adopted amendments result from TRS' four-year rule review of Chapter 43 in Title 34, Part 3, of the Texas Administrative Code. Chapter 43 addresses procedures for appeals of administrative decisions and contested cases relating to the TRS pension plan. A contested case is a proceeding in which a person adversely affected by a TRS administrative decision (a "petitioner") is given the opportunity for an adjudicative hearing. An adjudicative hearing is a trial-like proceeding for which the petitioner has been given proper notice and during which TRS and the petitioner may present evidence and argue their positions. The State Office of Administrative Hearings (SOAH) may conduct TRS' adjudicative hearings pursuant to the Texas Administrative Procedure Act (Chapter 2001 of the Texas Government Code), SOAH's procedural rules, and TRS' rules in Chapter 43. The adopted amendments are intended to improve administrative efficiency, to reflect existing policies and processes in formal rules, and to provide clearer guidance and notice to affected individuals.

One set of significant adopted amendments involves §43.1(b), concerning the steps in the administrative decision and appeal process, and §43.3(3) and §43.3(7), concerning respectively the definitions under Chapter 43 of an "appeal" and a "final administrative decision." By these amendments, TRS adopts amendments to include its deputy director in the administrative decision and appeal process. The adopted amendments reflect TRS' organizational structure. (The adopted amendments do not affect appeals of final Medical Board decisions on disability retirements: those appeals are made directly to the TRS Board of Trustees (board).) Under current rules, a person adversely affected by a decision of a department manager may ask the chief officer of the manager's division to grant the person's request. The determination by the chief officer of the division is considered the final written administrative decision (as opposed to the final decision of TRS, which is made by the executive director or the board and cannot be appealed further within TRS). The person may appeal the final written administrative decision of the chief officer by filing a petition with the executive director. The executive director may docket the appeal as a contested case with SOAH, which assigns an Administrative Law Judge (ALJ) to the case. The ALJ conducts an adjudicative, or evidentiary, hearing pursuant to the Administrative Procedure Act (APA) and the procedural rules of SOAH and TRS, including Chapter 43 of TRS' rules. At the conclusion of the SOAH proceedings, the ALJ issues a proposal for decision (PFD) to the executive director, who reviews and issues an order adopting, rejecting, or modifying the ALJ's recommendation and findings of fact and conclusions of law. A party may appeal the executive director's order to the Board of Trustees.

The adopted amendments to §§43.1(b), 43.3(3) and 43.3(7) require a person whose request has been denied by the chief division officer to make the request to the deputy director before appealing any further denial to the executive director. Because the chief division officer involved--either the chief benefit officer

or the chief financial officer--reports to the deputy director, it is appropriate for the deputy director to make the final administrative decision. A person adversely affected by the deputy director's decision could then appeal to the executive director, as described above.

Another set of significant adopted amendments involves the following rules: §43.3(3) and §43.3(5), concerning the definitions of "appeal" and "contested case"; §43.4, concerning decisions subject to review by an adjudicative hearing; §43.5, concerning a request for an adjudicative hearing; §43.9(a) and §43.9(b), concerning docketing an appeal for adjudicative hearing before SOAH; and §43.10, concerning TRS' authority to grant relief. The adopted amendments clarify and elucidate when an appeal of an administrative decision and the docketing of that appeal with SOAH is appropriate and when a particular matter may not be the proper subject of an administrative appeal before TRS and a contested case proceeding before SOAH. A contested case is an administrative proceeding in which the legal rights, duties, or privileges of a party are to be determined by TRS after an opportunity for adjudicative hearing. Tex. Gov't Code Ann. §2001.003(1); 34 TAC §43.3(5); 1 TAC §155.5(9). Not every request a person makes to TRS regarding the pension plan involves a legal right or privilege of the requester or a legal duty of the system that would entitle the person to an adjudicative hearing before SOAH. Not every request is appropriate for a contested case hearing under APA procedures. Absent express statutory authority, the APA does not independently provide a right to a contested case hearing. *Foster v. Teacher Retirement System*, 273 S.W.3d 883, 887 (Tex. App.-Austin 2008, no pet.). The system's enabling act authorizes but does not require the TRS executive director to refer an appeal to SOAH for a hearing. Tex. Gov't Code Ann. §825.115(c) (that statute prevails over any other law to the extent of any conflict). Further, it is well established that procedural due process does not protect the mere expectation of a property interest. *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972). "(T)o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it." *Id.*

In some cases, TRS does not have the authority to grant a person's request and doing so would be inconsistent with the terms of the pension plan. In such cases, the petitioner, TRS staff and management, SOAH, the board, and possibly others awaiting the outcome of the futile appeal have expended time, effort, and resources to no avail in the end. For that reason, TRS added language to the rules clarifying that the administrative appeal and contested case proceedings are not intended to address matters for which TRS lacks jurisdiction or authority to grant the relief sought or granting the relief would conflict with the terms of the pension plan.

Section-by-section explanations of all the adopted amendments to rules in Chapter 43, including other adopted amendments not explained above, are set out below.

Section 43.1 concerns the administrative review of individual requests. As already explained above, TRS adopts amendments including the deputy director in the administrative appeal process and having him or her make the final administrative decision, which could be appealed to the executive director.

Section 43.3 concerns definitions relating to the administrative review, appeal, and decision process under Chapter 43. Adopted amendments to this section include those described above for adding the deputy director to the appeal process in paragraph (7) and clarifying the standards for a valid ap-

peal in paragraphs (3) and (5). In addition to minor clarifying amendments, TRS adopts amendments further specifying when another person may be joined as a third party petitioner or respondent by adding language to say that such a person does not have to have actively opposed or supported the petition to be joined. Rather, in joining the party, TRS may determine whether the person's interests are "aligned" with those of the petitioner or respondent.

Section 43.4 concerns decisions subject to review by an adjudicative hearing. The adopted amendments to this section clarify the standards for a valid appeal, as explained above.

Section 43.5 concerns requests for adjudicative hearings. The adopted amendments to this section clarify the standards for a valid appeal, as explained above.

Section 43.6 concerns filing of documents. The adopted amendments to this section reflect current practice in determining whether a document relating to an administrative appeal before the executive director or Board has been properly and timely filed. This adopted amendment does not affect the acceptable methods or timeliness of providing SOAH or TRS other types of documents, such as the requests for relief submitted to the TRS department manager, chief division officer, or deputy director under §43.1. The first adopted amendment specifies acceptable methods of sending TRS documents relating to an appeal before the executive director or Board (i.e., personal delivery, overnight mail, regular fax, or United States mail). Emailed or electronically filed documents (other than regular fax) are not accepted. The second adopted amendment clarifies that TRS applies the "mail box rule" under the rules of civil procedure to the receipt of documents involving an appeal to the executive director or Board. That means that a document filed with TRS via United States mail is considered filed on the date of mailing as long it is received no later than 10 calendar days after the due date and the sender provides adequate proof of mailing.

Section 43.9 concerns the docketing of an appeal for adjudicative hearing and dismissal for failure to obtain setting. The adopted amendments to this section clarify the standards for a valid appeal, as described above. Under §43.9(b), the executive director's decision not to docket an appeal with SOAH would be the final decision of TRS and could not be appealed to the board. Under current TRS rule §43.46, which the board does not amend in this round of rulemaking, a party adversely affected by the executive director's decision not to docket an appeal may file a motion for rehearing by the executive director. If the executive director denies the motion for rehearing, the aggrieved party may seek judicial review of TRS' final administrative decision as allowed by law.

Section 43.10 concerns the authority of the executive director or, in the matter of a disability retirement certification, the Medical Board to grant the petitioner's request before an appeal is referred to SOAH or while it is still pending before the ALJ or other hearing official. The adopted amendments to this section clarify the standards for a valid appeal, as described above.

Section 43.12 concerns the form of petitions and other pleadings. The adopted amendments to subsection (d) of this section allow a petitioner to provide other sufficient identifying information in lieu of a Social Security Number when the latter is otherwise required. The adopted amendment to §43.12(g) specifies acceptable methods of sending TRS documents relating to an appeal before the executive director or board.

Section 43.16 concerns notice of hearing and other action. The adopted amendment to 43.16(a) reiterates the applicability of the mail box rule as adopted in amended §43.6 and explained above. The adopted amendment to §43.16(b)(5) reflects current administrative law and procedure regarding the consequences for failure to appear at a scheduled hearing, including dismissal, in accordance with the related SOAH rule on default proceedings, 1 TAC §155.501(b).

Section 43.37 concerns the recording of a hearing and use of a certified language interpreter. The adopted amendment to this section updates the citation to a SOAH rule.

Section 43.44 concerns discovery in a contested case. The adopted amendment updates the citation to a related SOAH rule.

Section 43.45 concerns the proposals for decision (PFD) by the ALJ, parties' exceptions to the PFD, and appeals to the board. The adopted amendments to §43.45(i) elucidate the board's discretion in deciding whether to hear oral argument in a case. Those adopted amendments also provide that, in exercising its discretion, the board may consider the privacy interests of a TRS participant who is not a party to the case but whose confidential information may be involved, like a designated beneficiary whose status as such TRS has upheld throughout the appeal process to this point and has not been joined as a party.

No comments were received concerning the proposed amendments.

Statutory Authority: The amendments are adopted under the following sections of the Government Code: §825.102, which authorizes the board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board; and §825.115(b), which authorizes the board to adopt rules for the implementation of that statutory provision relating to the authority of the board to make a final decision in a contested case.

Cross-Reference to Statute: The adopted amendments affect the following sections or chapters of the Government Code: §§825.101, 825.115, 825.202, 825.204, 825.506, 825.507, Chapter 2001 and Chapter 2003.

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CHAPTER 47. QUALIFIED DOMESTIC RELATIONS ORDERS

34 TAC §47.4, §47.17

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §47.4 and §47.17, concerning qualified domestic relations orders, without

changes to the text of the proposed rules as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9666).

The adopted amendments result from TRS' four-year rule review of Chapter 47 in Title 34, Part 3, of the Texas Administrative Code. Chapter 47 addresses court orders that divide TRS benefit payments, usually in connection with a divorce, and direct payment of part or all of a benefit to an "alternate payee." A qualified domestic relations order (QDRO) is a court order that has been reviewed by TRS and found to meet applicable requirements to allow TRS to make direct payment to an alternate payee of the portion of the TRS benefit awarded to the alternate payee, if, as and when the TRS benefit is payable to the TRS participant.

Section 47.4 concerns payment pursuant to qualified orders, including the timing of such payment. TRS adopts a clarifying amendment to reference the other rule in Chapter 47 with adopted amendments, §47.17. If §47.17 applies in a certain circumstance, then it will affect the timing of the payment of benefits in accordance with a QDRO under §47.4.

Section 47.17 addresses the calculation for alternate payee benefits before the commencement of a member's benefits that are subject to partial payment under a QDRO. TRS adopts amendments to the section to address various scenarios presented in court orders dividing retirement plan benefits under a QDRO. The adopted amendments elucidate how TRS determines the actuarial equivalent of the portion of a benefit awarded under a QDRO, in the event an alternate payee elects to receive such payment under §804.005 of the Government Code. The added language provides the method for calculating the alternate payee's actuarial equivalent benefit when the QDRO gives a stated (static) amount of monthly benefit, a maximum amount of total benefit, or a "no more than" monthly benefit.

No comments were received concerning the proposed amendments.

Statutory Authority: The amendments are adopted under the following sections of the Government Code: §825.102, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the system and the transaction of business of the board; §804.003(n), concerning QDROs, which authorizes TRS to adopt rules to administer the section; and §804.005(g), concerning payment in certain circumstances in lieu of benefits awarded by a QDRO, which authorizes TRS to adopt rules to administer the section.

Cross-Reference to Statute: The adopted amendments affect §804.003 and §804.005 of the Government Code and 26 U.S.C. §414(p) of the Internal Revenue Code.

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CHAPTER 51. GENERAL ADMINISTRATION

34 TAC §§51.1, 51.2, 51.7, 51.11, 51.12

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §§51.1, 51.2, 51.7, 51.11, and 51.12, concerning the general administration of the system, without changes to the text of the proposed rules as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9668). The adopted amendments result from TRS' four-year rule review of Chapter 51 in Title 34, Part 3, of the Texas Administrative Code. Chapter 51 addresses general administrative matters, including those relating to appointments to the Medical Board and Retirees Advisory Committee (RAC), vendor protests, waiver of employee-contribution deadline, TRS vehicles, Historically Underutilized Businesses (HUBs), and applicability of former laws on benefits (grandfathering provisions). The adopted amendments either update provisions to reflect current law or they elucidate TRS' current policies, procedures, or practices.

Section 51.1 concerns advisory and auxiliary committees. The section describes the committees that advise or otherwise serve the system and that are deemed necessary to assist the board in performing its duties, including the Medical Board, which reviews disability retirement matters, and the RAC, which reviews matters concerning the retiree health benefit program, TRS-Care. The Medical Board and RAC both make recommendations to the board. The rule does not apply to board committees composed of trustees; the board's bylaws address those committees. The adopted amendments update the sunset dates for the Medical Board and RAC and clarify a reference to the committees covered by the rule.

Section 51.2 concerns protest procedures for resolving vendor protests relating to purchasing issues. The adopted amendments reflect the Legislature's reorganization of purchasing functions administered by the Comptroller of Public Accounts (comptroller), Texas Facilities Commission, and Department of Information Resources. The adopted amendments update references to those agencies and their vendor protest rules that apply to the certain procurements for TRS, including those utilizing existing State of Texas master vendor agreements.

Section 51.7 concerns the assignment of TRS vehicles to staff. The adopted amendment corrects a typographical error in subsection (a) of the section.

Section 51.11 concerns efforts to procure goods or services utilizing HUBs. The adopted amendments reflect the legislative transfer of oversight of the state HUB program to the comptroller and would update references to the applicable HUB rules to those of the comptroller.

Section 51.12 concerns the applicability of certain benefits laws in effect before September 1, 2005. The section implements a 2005 legislative grandfathering provision (Senate Bill 1691, 79th Legislature, Regular Session) that preserves former law on three benefit provisions (i.e., qualifying for certain early-age retirement reduction factors, three-year salary average, and partial lump-sum option) for members who meet one or more of the following grandfathering requirements on or before August 31, 2005: attained at least age of 50; met the Rule of 70 (the sum of age plus years of service credit must equal 70 or greater); or had at least 25 years service credit. The adopted amendment in §51.12(a) clarifies that, to be grandfathered, the retiring member must have met one of the grandfathering requirements while a member of TRS and may not qualify by meeting a require-

ment while a member of ERS or another Texas public retirement system. The retiring TRS member seeking to be grandfathered could apply previous service credited by ERS or another Texas public retirement system to be used under the ERS/TRS transfer program or proportionate retirement program. But the individual would have to meet one of the grandfathering requirements while a member of TRS. Consequently, a retiring TRS member could not be grandfathered if: (1) he or she was never a member of TRS on or before August 31, 2005, or (2) he or she had been a member of TRS on or before August 31, 2005, but did not meet any of the grandfather criteria at the time of termination of membership. This clarification in the rule reflects existing TRS policy.

No comments were received concerning the proposed amendments.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, or the transaction of business of the board. Amended §51.1 is also adopted under §825.114 of the Government Code, which requires TRS by rule to determine the amount and manner of any compensation or expense reimbursement to be paid members of an advisory committee performing service for the retirement system on an advisory committee. Amended §51.12 is also adopted under §824.2045 of the Government Code, which authorizes the Board to adopt rules for the implementation of §824.2045 relating to the partial lump-sum option.

Cross-Reference to Statute: The adopted amendments to §51.1 affect §825.204 of the Government Code; §825.114 of the Government Code; Chapter 1575, Subchapter H (§§1575.351 - 1575.363), of the Insurance Code; and Chapter 1575, Subchapter I (§§1575.401 - 1575.408), of the Insurance Code. The adopted amendments to §51.2 and §51.7 affect §825.103 of the Government Code. The adopted amendments to §51.11 affect §825.514 of the Government Code. The adopted amendments to §51.12 affect §§824.202, 824.203, and 824.2045 of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2011.

TRD-201100998

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Effective date: April 1, 2011

Proposal publication date: October 29, 2010

For further information, please call: (512) 542-6438



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 14. OFFICE OF THE INDEPENDENT OMBUDSMAN OF THE TEXAS YOUTH COMMISSION

CHAPTER 601. OFFICE OF THE INDEPENDENT OMBUDSMAN OF THE TEXAS YOUTH COMMISSION

37 TAC §§601.1, 601.4, 601.8, 601.12, 601.15, 601.19

The Office of the Independent Ombudsman (OIO) adopts new §§601.1, 601.4, 601.8, 601.12, 601.15, and 601.19, relating to the Office of the Independent Ombudsman of the Texas Youth Commission. This new rules are adopted without changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 747).

The new rules are adopted to implement the statutory requirements of Human Resources Code §64.058.

Section 601.1 defines terms related to the OIO program.

Section 601.4 provides general information about the policies and procedures of the agency. The policies and procedures promote awareness of OIO information among the public and among the youth who are committed to Texas Youth Commission (TYC) facilities. The policies and procedures shall be followed by staff of the OIO.

Section 601.8 addresses the handling of complaints and inquiries. The rule provides a framework for the OIO staff to receive and handle complaints in a timely and thorough manner. The rule also provides a process for the investigation and resolution of complaints and inquiries, and includes timeframes and requires maintaining of documentation.

Section 601.12 establishes a process of review and inspection of TYC facilities. The rule requires periodic inspection of TYC facilities, provides areas of review to include review of education services, facility security, TYC's general treatment program, and review of facility safety. The rule requires that the OIO staff make findings and provide those findings to appropriate TYC leadership and provide findings to the Ombudsman.

Section 601.15 sets forth the reporting requirements the OIO will follow, including quarterly reports to the governor, the auditor, and other state leadership. These reports will cover the work of the ombudsman and the results of any review or investigation conducted by the OIO. The rule also requires the OIO to immediately report to the same state leadership any particularly serious or flagrant inappropriate activities concerning TYC. The adoption of this rule is required by Human Resources Code §64.055.

Section 601.19 establishes procedures for providing TYC the opportunity to respond to OIO reports. It also provides a deadline for TYC to submit responses to OIO reports, as required by Human Resource Code §64.060(b).

No comments were received regarding the adoption of these rules.

The new sections are authorized under the authority of Human Resources Code, §64.058, which directs the OIO to adopt rules to establish policies and procedures for the operation of the OIO. The office is further authorized to adopt rules that establish procedures for the OIO to issue reports and for the TYC to review and comment on certain OIO reports, which are prepared pursuant to Human Resources Code §64.060.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2011.
TRD-201101037
Debbie Unruh
Chief Ombudsman
Office of the Independent Ombudsman of the Texas Youth Commission
Effective date: April 3, 2011
Proposal publication date: February 11, 2011
For further information, please call: (512) 919-5063



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) adopts amendments to §217.28, Specialty License Plates, Symbols, Tabs, and Other Devices, and §217.62, Requirement for Non-repairable or Salvage Vehicle Title. The amendments to §217.28 and §217.62 are adopted without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11566) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §217.28 are necessary to streamline the process for registration validation for various plates and to clarify the policy regarding license plate replacement if a motor vehicle or license plate is stolen.

The amendments to §217.62 are necessary to clarify that the rules concerning owner retained vehicles apply to vehicles that were titled in Texas.

Amendments to §217.28(d)(2) update the language to include the registration period. Previously, the department embossed every license plate listed in this subparagraph with the expiration date of the registration. These plates no longer contain this feature, but have a registration sticker instead.

Amendments to §217.28(d)(3) change the wording to include that some of the listed license plates, such as the state official license plates, will not have a renewal specialty license plate fee. References to specific license plate replacement in §217.28(d)(3)(E) are deleted as that subject matter is covered in 43 TAC §217.22.

Amendments to §217.28(f)(2) replace the title of the paragraph, "Interim replacement tags," with the current terminology of "temporary registration insignia." Paragraph (3) of §217.28(f) is clarified to state that the same alphanumeric sequenced plate will not be replaced until the plate or motor vehicle is recovered. Until recovery, the owner of the motor vehicle may be issued another alphanumeric sequenced plate at no charge.

Amendments to §217.62 clarify the applicability of owner retained vehicles to vehicles that were titled in Texas. Transportation Code, §501.093 and §501.094 require an insurance company or a self-insured person to submit a report to the department stating that the motor vehicle was damaged. The owner must apply for a salvage or non-repairable title. If the

motor vehicle is not titled in Texas, then the issuing state will title the vehicle in accordance with its laws. Such a title could then be surrendered to Texas for a comparable Texas title. The amendments to §217.62 clarify that the owner-retained statutes apply only to Texas titles.

COMMENTS

No comments on the proposed amendments were received.

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.28

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 501, Subchapter E, and Transportation Code, §§502.0021, 502.184, 502.1841, and Transportation Code, §504.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101004

Brett Bray

General Counsel

Texas Department of Motor Vehicles

Effective date: March 31, 2011

Proposal publication date: December 24, 2010

For further information, please call: (512) 463-8683



SUBCHAPTER D. NON-REPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §217.62

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 501, Subchapter E, and Transportation Code, §§502.0021, 502.184, 502.1841, and Transportation Code, §504.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2011.

TRD-201101005

Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: March 31, 2011
Proposal publication date: December 24, 2010
For further information, please call: (512) 463-8683



IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Correction of Error

The Department of Aging and Disability Services (DADS) adopted new rules and repeals under 40 TAC Chapter 45, concerning community living assistance and support services, in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1840). New §45.103, Definitions, was adopted with changes and republished on page 1853. Due to an error in the agency's submission, the text of §45.103(30) was incorrect and the acronym "MR" should have been "ICF/MR".

The corrected paragraph reads as follows:

"(30) ICF/MR--Intermediate care facility for persons with mental retardation or related conditions."

TRD-201101021



Texas Department of Agriculture

Request for Applications: Child Care Wellness Grant Program

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010 (P.L. 111-80) authorized the Food and Nutrition Service (FNS) to award \$8 million in grants to State Agencies administering the Child and Adult Care Food Program (CACFP) for projects aimed at improving the health and nutrition of children in child care settings. The Texas Department of Agriculture (TDA) received a CACFP Child Care Wellness Grant from USDA (CFDA #10.579) in the total amount of \$1 million for a 3-year term. TDA plans to award approximately \$250,000 during year 1 of the Program.

Eligibility Criteria. To be eligible for the Child Care Wellness Grant Program funds, an applying organization must be a Texas CACFP sponsor or provider.

Submitting an Application. Applications must be submitted on the form provided by TDA, FND-134. Applications are available on TDA's website at: www.TexasAgriculture.gov or upon request from TDA by calling (512) 475-0089. Applications must be mailed to TDA headquarters in Austin by the postmark deadline provided below. Applications must be certified by the applicant and include all required supporting documentation.

Deadline for Submission of Applications. To be considered as timely, applications mailed to TDA must have a postmark of **May 15, 2011, or earlier.** Applications sent using an express or overnight carrier must also be posted on May 15, 2011, or earlier. Hand-submitted applications will also be accepted, and must be received at TDA Headquarters no later than 5:00 p.m. on May 15, 2011.

Grant Agreement. Eligible organizations that qualify to receive grant funds must execute a Grant Agreement with TDA prior to the disbursement of any grant funds.

Further Information. Additional information about the Child Care Wellness Grant Program, the application process and program rules can be found under the Grants/Funding tab on TDA's website at:

www.TexasAgriculture.gov. In addition, organizations may contact Ms. Linda Simmons at (512) 475-0089 or Linda.Simmons@TexasAgriculture.gov for more information.

TRD-201101073

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: March 15, 2011



Request for Applications: Young Farmer Grant Program

Statement of Purpose. Pursuant to the Texas Agriculture Code, §58.011, the Texas Department of Agriculture (TDA) is requesting applications for the Young Farmer Grant program (YFGP). The YFGP is administered by TDA under the direction of the Texas Agricultural Finance Authority (TAFA). The purpose of this program is to provide financial assistance in the form of dollar-for-dollar matching grant funds to those persons 18 years or older but younger than 46 years of age that are engaged or will be engaged in creating or expanding an agricultural business in Texas.

Submission Dates/Locations. Forms required for submitting an application are available by accessing TDA's website at: www.TexasAgriculture.gov or by emailing TAFA at finance@TexasAgriculture.gov. One hard copy of the application must arrive no later than 5:00 p.m. on **May 6, 2011** to one of the following:

Physical Address: Texas Department of Agriculture, Texas Agricultural Finance Authority, Attn: Allen Regehr, 1700 N. Congress Avenue, 11th Floor, Austin, TX 78701, Phone Number (512) 936-0273 or (512) 463-9932, Fax Number (888) 216-9867.

Mailing Address: Texas Department of Agriculture, Texas Agricultural Finance Authority, Attn: Allen Regehr, P.O. Box 12847, Austin, TX 78711.

Proposals must set forth accurate and complete information as required by this Request for Applications (RFA). Oral modifications will not be considered. Electronic applications will not be accepted or considered.

Eligibility. Grant applications will be accepted from any person 18 years or older but younger than 46 years of age that is engaged or will be engaged in creating or expanding agriculture in Texas. The applicant must be able to make dollar-for-dollar matching expenditures to sustain, create or expand the proposed project.

Application Requirements.

Funding Parameters:

The TAFA Board of Directors (board) anticipates funding in an amount of \$150,000 for grants not less than \$5,000 and not to exceed \$10,000 per grant application. Recipients will have up to two years to expend grant funds.

The TAFA board reserves the right to fully or partially fund any particular grant application.

Form Requirements:

Applications must be submitted on form RED-300 for consideration. Required forms and instructions are available by accessing TDA's website at www.TexasAgriculture.gov or by e-mailing TAFAs at finance@TexasAgriculture.gov.

Budget Information:

YFGP projects are paid on a cost reimbursement basis.

1. Eligible Expenses. Generally, eligible expenses include those costs that are necessary and reasonable for proper and efficient performance and administration of a project. Expenses must be properly documented with sufficient detail, including copies of invoices. Examples of eligible expenditures are:

Personnel costs - both salary and benefits of those that perform work for the grant recipient;

Materials and direct operating expenses - equipment that costs less than \$5,000 per unit, animals, seed, fertilizer, irrigation, etc.;

Equipment - nonexpendable, tangible personal property having a useful life of less than one year and an acquisition cost of less than \$5,000; and

Other expenses - any expenses that do not fall into the above categories;

Indirect expenses - the YFGP limits reimbursable indirect expenses to 10% of the grant award.

2. Ineligible Expenses. Expenses that are prohibited by state or federal law are ineligible. Examples of these expenditures are:

Alcoholic beverages;

Entertainment;

Contributions for charitable, political, or lobbying purposes;

Expenses falling outside of the contract period;

Expenses for expenditures not listed in the project budget;

Expenses that are not adequately documented;

Value of applicant's own services;

Land; and

Personal property or other capital items with a useful life of more than one year and a cost of more than \$5,000.

3. Description of the Budget. Applicant must present an overall project budget and include the following items in the budget description:

A.Wages: Grant funds may be used for directly supporting salaries and wages of employees, but not for the value of your own services.

B.Materials and Direct Operating Expenses: The grant may be used for expenses that are directly related to the day-to-day operation of the project, if those expenses are not included in any other budget category, and if those expenses have an acquisition cost of less than \$5,000 per unit. An applicant must allocate costs on a prorated basis for shared usage.

C.Equipment: Eligible equipment is defined as tangible personal property having a useful life of less than one year and an acquisition cost of \$5,000 or less per unit. Applicants must submit a list of all proposed equipment purchases for approval. Recipients are not authorized to purchase any equipment until they have received written approval to do so from the Commissioner or his designee through the original grant award or a subsequent grant adjustment notice. The YFGP may refuse any request for equipment. Decisions regarding equipment purchases are made based on whether or not the grant recipient has demonstrated

that the requested equipment will be purchased at a reasonable cost and is essential to the successful operation of the project.

D.Professional/Contractual: Any contract or agreement between a grant recipient and a third party must be in writing and consistent with Texas law. Recipients must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation.

E.Indirect Expenses: Grant funds may be used for indirect costs up to 10% of the amount of the grant award.

F.Additional Budget Information: Applicant should provide additional information that will be helpful to the TAFAs board in evaluating a grant application, including justification for equipment purchases, a list of subcontractors and amounts, a list of key personnel and salaries to be paid with the grant, and a description of other large expenditures.

G.Documentation of Employment Status. Applicant should be prepared to furnish documentation of lawful employment status for each employee included in personnel costs for the project.

Evaluation of Applications.

The TAFAs board will review and evaluate all applications. Prior to consideration by the board, TDA staff will score and rank the applications based on the criteria identified by the TAFAs board. The board is not required to make awards based solely on staff's scoring or ranking of the applications. The board may consider other factors in making grant awards under the program, including, without limitation, the quality of the application, applicant's need for financial assistance, the project's ability to create, enhance, or sustain applicant's agricultural operation, the project's ability to improve overall agricultural productivity in Texas, and the project's ability to increase the number of agricultural enterprises in Texas that are owned and operated by young farmers.

Award Information and Notification.

The TAFAs board will approve projects for funding. The TAFAs board reserves the right to accept or reject any or all applications. TDA and TAFAs are under no legal or other obligation to award a grant on the basis of a submitted application. Neither TDA nor TAFAs will pay for any cost or expense incurred by applicant or any other entity in responding to this RFA, including, without limitation, compensation for the value of applicant's time or services incurred in responding to this RFA.

Public announcements and written notifications of funding rounds will be made. Selected applicants will be notified of the amount of award, duration of the grant, and any special conditions associated with the project.

General Compliance Information.

1. Prior to accepting the Young Farmer grant and signing the grant agreement, the recipient will be provided a copy of TDA reporting requirements, for review and execution. The Grant Agreement outlines billing procedures, annual reporting requirements, procedures for requesting a change in the scope or budget for a project, and other miscellaneous items.

2. Late or incomplete applications will not be accepted.

3. Any delegation by a grant recipient to a subcontractor regarding any duties and responsibilities imposed by the grant award must be approved in advance by TDA but shall not relieve the recipient of responsibility for performance.

4. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature, TDA and TAFAs.

5. Any information or documentation submitted to TDA in connection with a grant application is subject to disclosure under the Texas Public Information Act.

6. While TDA and TAFE attempt to observe the strictest confidence in handling applications, they cannot guarantee complete confidentiality on any matter. The confidentiality of applicant's "proprietary data", if so designated, shall be strictly observed to the extent permitted by Texas law, including the Texas Public Information Act.

7. The ownership and disposition of all patentable products and intellectual property inventories shall be subject to the agreement of the grant recipient and TDA.

8. Funded projects must remain in full compliance with state and federal law and regulations. Noncompliance may result in termination.

9. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the project. Records shall be maintained for three years after the completion of the project or as otherwise agreed with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the project at any time throughout the duration of the grant agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the project's records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect project locations and to obtain full information regarding all project activities.

10. If a grant recipient has a financial audit performed in any year during which the recipient receives grant funds, the recipient shall, upon TDA's request, provide a complete copy of such audit and all information related thereto to TDA and/or TAFE, including the audit transmittal letter, management letter, and any schedules in which grant funds are analyzed, discussed, included, or reported.

11. Grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: <http://www.governor.state.tx.us/files/state-grants/UGMS062004.doc>.

For any questions: Please contact Mr. Allen Regehr at (512) 463-9932 or by e-mail at: finance@TexasAgriculture.gov.

TRD-201101067
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: March 15, 2011

Department of Assistive and Rehabilitative Services

Opportunity for Early Public Comment on Draft Proposed DARS ECI Rules

The Texas Department of Assistive and Rehabilitative Services (DARS) is providing an opportunity for early public review and comment on draft proposed amendments to 40 TAC Chapter 108, Division for Early Childhood Intervention Services.

The draft proposed amendments can be viewed on the DARS website <http://www.dars.state.tx.us/ecis/index.shtml>, or written copies can be obtained from the Department.

DARS is accepting early public comments related to the draft proposed amendments through **April 4, 2011**.

Written comments related to the draft proposed rules may be sent by postal mail to:

Texas Department of Assistive and Rehabilitative Services
Division for Early Childhood Intervention
4900 North Lamar Boulevard

Mail Code 3029

Austin, Texas 78751-2399

or by electronic mail at:

ECI.policy@dars.state.tx.us

At a later date DARS will formally propose amendments to 40 TAC Chapter 108, Division for Early Childhood Intervention Services. The proposed amendments will be posted for public comment, and public hearings to solicit public testimony will be conducted around the state in June 2011.

TRD-201101039

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Filed: March 14, 2011

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 28, 2011, through March 9, 2011. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on March 16, 2011. The public comment period for this project will close at 5:00 p.m. on April 15, 2011.

FEDERAL AGENCY ACTIONS:

Applicant: Fairways Exploration and Production, LLC; Location: The center point of the project area is located approximately 18 miles southeasterly from Winnie, Texas. The project can be located on the U.S.G.S. quadrangle maps titled: Anahuac, TX, Monroe City, TX, Oak Island, TX, Shiloh, TX, and Whites Bayou, TX. Approximate UTM center point coordinates in NAD 27 (meters) are: Zone 15; Easting: 338740.820; Northing: 3293153.722. Project Description: The applicant is proposing to conduct a 3D seismic survey project of approximately 80.12 square miles in Chambers and Liberty County, TX. This survey, the Monroe City 3D Seismic Survey - Phase II, will provide the client with a high-resolution image of the subsurface geological features that will allow for effective evaluation of hydrocarbon reserves underlying the project area. The charge depth and configuration proposed for land operations consists of single, 80-foot holes drilled at in-

tervals of 165 feet along each source line within the majority of the project area. Source line spacing is 1,650 feet. Each source location would be loaded with a more or less 2.5 - 5.0-pound explosive charge, and the hole would be plugged in accordance with state regulations for the prevention of commingling of surface and ground water. Mini-holes may be drilled in wet areas using manportable equipment if access by conventional equipment is not feasible. Should mini-holes be necessary, a five-hole pattern (10-foot holes), using 1/3 pound charges, would be utilized. In open water shot holes of 110-foot depth will be drilled in areas 6 feet or less in depth and loaded with a more or less 7.7 pound explosive charge. In open water areas of greater than 6-foot water depth air guns will be used. CMP Project No.: 11-0256-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-00623 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: U.S. Fish and Wildlife Service; Location: The project site is located in the Gulf of Mexico, at the Texas Point National Wildlife Refuge in Jefferson County, Texas. The project site can be located on the U.S.G.S. quadrangle map titled: Sabine Lake, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 413911; Northing: 3283628. Project Description: The applicant proposes to place material dredged from the Golden Pass LNG turning basin (reference Permit Number SWG-2004-02118) onto a 3-mile stretch of beach face at Texas Point for the purpose of beach renourishment. The applicant requests permission to place up to 10 million cubic yards of dredged material onto the beach, per year, for a period of 5 years. CMP Project No.: 11-0190-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-00238 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Tri-C Resources LLC; Location: The project is located west of State Highway 87, approximately 8.6 miles southeast of Port Arthur, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur South, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone: 15; Easting: 407008; Northing: 3296177. Project Description: The applicant proposes to construct a well pad for the purpose of oil and gas mineral exploration. Well pads and levees were previously authorized at the subject site under Department of the Army Permits 19751 and 22718. The current exploration is proposed at alternate depths than the previous exploration attempts. The construction of the exploration pad and access will temporarily impact approximately 1.59 acres of wetlands, of which 0.43 acre will be permanently impacted by the construction of a permanent production pad in the event that the exploration results in production. In the event the well is successful, the applicant additionally proposes to construct a permanent access road, impacting 0.07 acre of wetlands, and 0.01 acre of jurisdictional waters. In addition, the applicant proposes to install an approximately 3,500-foot long, 4-inch-diameter pipeline for conveyance of production materials, which will tie into an existing line. The proposed pipeline will be placed within an existing gravel access road avoiding waters of the United States. A point of intersection bore is proposed as part of the pipeline construction, which will temporarily impact 0.01 acre of wetlands. The tie-in bore will temporarily impact approximately 0.04 acre of wetlands, and permanently impact 0.02 acre of wetlands. Total temporary impacts are proposed to be 1.64 acres. Total permanent impacts are proposed to be 0.53 acres. CMP Project No.: 11-0253-F1. Type of Application:

U.S.A.C.E. permit application #SWG-2010-00854 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Kate Zultner, Consistency Review Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201101064
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: March 15, 2011



Notice of Funds Availability - Texas Coastal Management Program Grants Program

The Coastal Coordination Council (Council) files this Notice of Funds Availability to announce the availability of §306/§306A federal grant funds under the Texas Coastal Management Program (CMP). The purpose of the CMP is to improve the management of the state's coastal resources and to ensure the long-term ecological and economic productivity of the coast.

A federal award to the state of approximately \$2 million in §306/§306A funding is expected in October 2012. The Council, which oversees the implementation of the CMP, passes through approximately 90% of the available §306/§306A funds to eligible entities in the coastal zone to support projects that implement and/or advance the CMP goals and policies.

Eligible Applicants

The following entities are eligible to receive grants under the CMP:

- 1) Incorporated cities within the coastal zone boundary;
- 2) County governments within the coastal zone boundary;
- 3) Texas state agencies;
- 4) Texas public colleges/universities;
- 5) Subdivisions of the state with jurisdiction in the coastal zone (e.g., navigation districts, port authorities, river authorities, and Soil and Water Conservation Districts with jurisdiction in the coastal zone);
- 6) Councils of governments and other regional governmental entities within the coastal zone boundary;
- 7) The Galveston Bay Estuary Program;
- 8) The Coastal Bend Bays and Estuaries Program; and
- 9) Nonprofit organizations located in Texas that are nominated by an eligible entity in categories 1-8 above.

(A nomination may take the form of a resolution or letter from a responsible official of an entity in categories 1-8. The nominating entity is not expected to financially or administratively contribute to the management and implementation of the proposed project.)

Funding Categories

The Council will accept applications for projects that address any of the following funding categories. The categories are not listed in order of preference:

- 1) Coastal Natural Hazards Response;
- 2) Critical Areas Enhancement;
- 3) Shoreline Access;
- 4) Water Quality Improvement;
- 5) Waterfront Revitalization and Ecotourism Development;
- 6) Permit Streamlining/Assistance and Governmental Coordination;
- 7) Information and Data Availability; and
- 8) Public Education and Outreach.

Grant workshops will be held in five coastal cities to help potential applicants through the Guidance and Application Package. Grant workshops are opportunities for potential applicants to learn about the changes made to the grant program and to discuss specific project ideas with staff. Applicants are not required to attend a workshop, but attendance is strongly encouraged for first-time and/or inexperienced applicants who are unfamiliar with the CMP application process.

May 3, 2011, 10:30 a.m., Port Lavaca, City Hall, 202 N. Virginia.

May 5, 2011, 10:30 a.m., Port Arthur, City Hall, 444 Fourth Street, 5th Floor Conference Room.

May 11, 2011, 9:30 a.m., Port Isabel, Port Isabel Housing Authority - Community Center, 100 Hockaday.

May 17, 2011, 10:00 a.m., Corpus Christi, Texas A&M University - Natural Resources Center, 6300 Ocean Drive, Room 1003.

May 25, 2011, 9:30 a.m., Galveston, County Courthouse, 722 Moody, Workshop Room.

The requirements to receive federal grant funds are outlined in the CMP Cycle #17 Grant Guidance and Application Packet. To download the electronic version, the grant guidance and application packet is available at <http://www.glo.texas.gov/what-we-do/caring-for-the-coast/grants-funding/cmp/index.html>.

In order to submit pre-proposals or final applications, you must register to receive a user ID and password.

Applicants must submit electronically. Facsimiles or hard copies of pre-proposals and final applications will not be accepted.

The deadline to receive pre-proposals is Wednesday, June 22, 2011 by 5:00 p.m. Submission of a pre-proposal is optional but is strongly recommended for first-time and/or inexperienced applicants who are unfamiliar with the CMP application process, applicants who have an idea for a new and/or innovative project, applicants who are uncertain if a project is eligible under this grant program, or applicants submitting research projects. Written comments will only be provided to applicants who submit pre-proposals by June 22, 2011 by 5:00 p.m. The deadline to receive final grant applications is Wednesday, October 12, 2011 by 5:00 p.m.

TRD-201101029

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 11, 2011



Comptroller of Public Accounts

Local Sales Tax Rate Change Notice Effective April 1, 2011

LOCAL SALES TAX RATE CHANGES EFFECTIVE April 1, 2011

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2011 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Martindale (Caldwell Co)	2028035	.012500	.080000
Three Rivers (Live Oak Co)	2149020	.012500	.080000

An additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporation will become effective April 1, 2011 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Morgans Point Resort (Bell Co)	2014086	.015000	.082500

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporation will become effective April 1, 2011 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Coffee City (Henderson Co)	2107146	.015000	.077500

An additional 1/2 percent city sales and use tax that includes the adoption of a 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code and an additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporation will become effective April 1, 2011 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Caney City (Henderson Co)	2107066	.020000	.082500

The additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be **abolished** and the adoption of an additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporation will become effective April 1, 2011 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Littlefield (Lamb Co)	2140029	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporation will be reduced to 1/4 percent and the adoption of an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2011 in the city listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Marquez (Leon Co)	2145060	.015000	.082500

The additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be reduced to 1/8 percent and the additional 1/4 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporation will be increased to 3/8 percent effective April 1, 2011 in the city listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Bee Cave (Travis Co)	2227150	.020000	.082500

An additional 1 percent SPD sales and use tax for emergency services as permitted under Chapter 775 of the Health and Safety Code will become effective April 1, 2011 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>
Comal County Emergency Services District No. 5	5046569	.010000

A 1/4 percent special purpose district sales and use tax will become effective April 1, 2011 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Corral City Municipal Development District	5061612	.002500	SEE NOTE 1

A 5/8 percent special purpose district sales and use tax will become effective April 1, 2011 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Chambers County Emergency Services District No. 1	5036543	.006250	SEE NOTE 2

A 2 percent special purpose district sales and use tax will become effective April 1, 2011 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Travis County Emergency Services District No. 5-A	5227631	.020000	SEE NOTE 3
Westwood Magnolia Parkway Improvement District	5170709	.020000	SEE NOTE 4

NOTE 1: The Corral City Municipal Development District has the same boundaries as the Corral City extra-territorial jurisdiction which includes the City of Corral City. Contact the district representative at (940) 648-3831 for additional boundary information.

NOTE 2: The Chambers County Emergency Services District No.1 is located in the eastern portion of Chambers County, which has a countywide special purpose district sales and use tax to provide revenue for health services in the county. The Chambers County Emergency Services District No.1 has the same boundaries as the Winnie-Stowell Hospital District which also has a special purpose district sales and use tax. The unincorporated areas of Chambers County in ZIP codes 77661 and 77665 are partially located within the Chambers County Emergency Service District No.1. Contact the district representative at (409) 296-4133 for additional boundary information.

NOTE 3: The Travis County Emergency Services District No. 5-A is the unincorporated area of the original district, which is located in the southern portion of Travis County. The unincorporated areas of Travis County in ZIP codes 78652, 78739, 78748 and 78749 are partially located within the Travis County Emergency Services District No.5-A. Contact the district representative at (512) 247-8352 for additional boundary information.

NOTE 4: The Westwood Magnolia Parkway Improvement district is located in the southern portion of Montgomery County. The unincorporated area of Montgomery County in ZIP codes 77354 is partially located within the Westwood Magnolia Parkway Improvement District. Contact the district representative at (713) 860-6400 for additional boundary information.

TRD-201101033
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: March 14, 2011

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Office of Consumer Credit Commissioner

Notice of Rate Bracket Adjustment

The Consumer Credit Commissioner of Texas has ascertained the following brackets and ceilings by use of the formula and method described in Texas Finance Code §341.203.¹

The amounts of brackets in Texas Finance Code §342.201(a) are changed to \$1,890.00 and \$15,750.00, respectively.

The amounts of brackets in Texas Finance Code §342.201(e) are changed at \$3,150.00, \$6,615.00, and \$15,750.00, respectively.

The ceiling amount in Texas Finance Code §342.251 and §342.259 are changed to \$630.00 and \$1,260.00, respectively.

The amounts of the brackets in Texas Finance Code §345.055 are changed to \$3,150.00 and \$6,300.00, respectively.

The amount of the bracket in Texas Finance Code §345.103 is changed to \$3,150.00.

The ceiling amount of Texas Finance Code §371.158 is changed to \$15,750.00.

The amounts of the brackets in Texas Finance Code §371.159 are changed to \$189.00, \$1,260.00, and \$1,890.00, respectively.

The above dollar amounts of the brackets and ceilings shall govern all applicable credit transactions and loans made on or after July 1, 2011, and extending through June 30, 2012.

¹Computation method: The Reference Base Index (the Index for December 1967) = 101.6. The December 2010 Index = 641.200. The percentage of change is 631.10%. This equates to an increase of 630% after disregarding the percentage of change in excess of multiples of 10%.

TRD-201101069
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 15, 2011

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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 03/21/11 - 03/27/11 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 03/21/11 - 03/27/11 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-201101070
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 15, 2011

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Credit Union Department

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Reeves County Teachers Credit Union, Pecos, Texas to expand its field of membership. The proposal would permit employees of HKA Corporation, Health Select Corporation and J & Z Corporation, who work in or are paid from Pecos, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcup.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201101076
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 16, 2011

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Right Choice Credit Union, Houston, Texas - See *Texas Register* issue, dated December 31, 2010.

Application to Amend Articles of Incorporation - Approved

Auto Parts Employees Credit Union, Fort Worth, Texas - See *Texas Register* issue, dated January 28, 2011.

Application for a Merger or Consolidation - Approved

Thermon Employees Credit Union (San Marcos) and St. John's Federal Credit Union (San Marcos) - See *Texas Register* issue, dated August 27, 2010.

TRD-201101077

Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 16, 2011

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Texas Council for Developmental Disabilities

Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for one project that will demonstrate how appropriate supports may help individuals with developmental disabilities to complete post-secondary education that will help them achieve their employment goals.

The Council has approved funding up to \$125,000 per year, for up to 5 years, for the project funded under this Announcement. Funds available for this project are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of an independent review process established by the Council and the availability of funds. **Continuation funding for the subsequent years will not be automatic**, but will be based on continued availability of federal funds, a review of the project's accomplishments, and other items. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this Request for Proposals (RFP) or more information about TCDD may be obtained through TCDD's website at <http://www.txddc.state.tx.us>. All questions pertaining to this RFP should be directed to Joanna Cordry, Planning Coordinator, at (512) 437-5410 or via email Joanna.Cordry@tcdd.state.tx.us. Application packets must be requested in writing or downloaded from the Internet.

Deadline: One hard copy, with original signatures, and one electronic copy must be submitted. All proposals must be received by TCDD not later than 5:00 p.m. Central Time, Wednesday, June 1, 2011, or, if mailed, postmarked prior to midnight on the date specified above. Proposals may be delivered by hand or mailed to TCDD at 6201 East Oltorf, Suite 600, Austin, TX 78741-7509, to the attention of

Jeri Barnard. Faxed proposals cannot be accepted. Electronic copies should be addressed to Jerianne.Barnard@tcdd.state.tx.us.

Proposals will not be accepted after the due date.

Grant Proposers' Workshops: The Texas Council for Developmental Disabilities will conduct telephone conferences to help potential applicants understand the grant application process and this specific RFP. In addition, answers to frequently asked questions will be posted on the TCDD website. Please check the TCDD website at <http://www.txddc.state.tx.us> for a schedule of conference calls for this RFP.

TRD-201101092

Roger Webb

Executive Director

Texas Council for Developmental Disabilities

Filed: March 16, 2011

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East Texas Council of Governments

Request for Proposals

As the Administrative unit for the Workforce Solutions East Texas Board, the East Texas Council of Governments (ETCOG) is soliciting proposals for a contractor to provide Child Care Services (CCS) in the East Texas Workforce Development Area (WDA). The contractor will arrange for the delivery and payment of child care for eligible families through the (CCS) system. The contract period will begin October 1, 2011 and run through September 30, 2012 with the availability of four, one-year potential contract renewal options. It is anticipated that the funding available for Child Care Services for the upcoming contract period will be \$2,121,964 for operations with a pass through budget of \$13,087,409 for a total of \$15,209,373.

Counties that comprise the East Texas WDA are Anderson, Camp, Cherokee, Gregg, Harrison, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, Van Zandt, and Wood.

Proposers may be governmental units, public agencies, business organizations, labor organizations, public or private not-for-profit corporations, or private for-profit corporations organized in accordance with state and federal laws. Proposers may submit a proposal under one of two options: (1) Turn Key Child Care Services Contractor - The Proposer provides the management and staffing through one company or organization - Management and staff are employees of the proposing entity. (2) Managing Director with an Employer of Record Organization (EOR) - The proposing individual or entity may submit a proposal for the managing director function in partnership with an Employer of Record organization, to cover the staffing function for the Child Care Services system.

Persons or organizations wanting to receive a Request for Proposals (RFP) package, should submit a request by letter, fax, or email to the East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662, Attn: Gary Allen (903) 984-8641 Ex 227. The fax number for ETCOG is (903) 983-1440 or email gary.allen@etcog.org. Questions concerning the RFP process should be addressed by email or fax to Gary Allen.

The Requests for Proposals will not be released prior to March 11, 2011. The anticipated deadline for receipt of proposals will be May 17, 2011.

Historically Underutilized Businesses (HUBs) are encouraged to apply. All programs and employers under the auspices of the Workforce Solutions East Texas Board are in compliance with EEO. Auxiliary aids and services are available, upon request, to individuals with disabilities.

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 **April 25, 2011**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 25, 2011**. 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: ARC Communities 8 LLC; DOCKET NUMBER: 2010-1731-PWS-E; IDENTIFIER: RN101439578; LOCATION: Aledo, Parker County; TYPE OF FACILITY: mobile home park; RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.42(1), by failing to maintain a thorough plant operations manual for operator review and reference; 30 TAC §290.45(b)(1)(F)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.45(b)(1)(F)(i) and THSC, §341.0315(a)(1), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per connection; PENALTY: \$215; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3672; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Ascend Performance Materials, LLC; DOCKET NUMBER: 2009-1997-AIR-E; IDENTIFIER: RN100238682; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 115.722(c)(2), New Source Review (NSR) Permit Numbers 38336, PSD-TX-910, and N-011, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(1)(H) and THSC, §382.085(b), by

failing to properly report the July 19, 2009 emissions event; 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit (FOP) Number O-02325 General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit a complete and accurate semi-annual deviation report for the December 1, 2008 - May 31, 2009 reporting period; 30 TAC §116.110(a) and §116.770(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain proper authorization to operate a previously grandfathered emissions source; 30 TAC §122.143(4) and §122.210(a), FOP Number O-02325 Special Terms and Conditions (STC) Number 19(B), and THSC, §382.085(b), by failing to timely incorporate NSR Permit Number 48895 into FOP Number O-02325, 30 TAC §116.115(c), NSR Permit Numbers 18251, 38336, PSD-TX-910, and N-011, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits during an emissions event; and 30 TAC §116.115(c), NSR Permit Number 18251 and N-011, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits during an emissions even; PENALTY: \$65,564; Supplemental Environmental Project (SEP) offset amount of \$32,782 applied to Brazoria County - Brazoria County Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Aus-Tex Parts & Services, Limited; DOCKET NUMBER: 2010-1683-MWD-E; IDENTIFIER: RN102314218; LOCATION: Hays County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014060001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with the permitted effluent limits for total suspended solids (TSS), biochemical oxygen demand (BOD), and dissolved oxygen (DO), 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0014060001, Monitoring and Reporting Requirements Number 1, by failing to submit a complete discharge monitoring report (DMR); 30 TAC §305.125(11)(a) and §319.4 and TPDES Permit Number WQ0014060001, Monitoring and Reporting Requirements Number 3.a., by failing to collect and analyze samples for required parameters at the frequency specified in the permit; and 30 TAC §305.125(17) and TPDES Permit Number WQ0014060001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2009; PENALTY: \$13,510; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2800 S IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Baytown Asphalt Materials, Limited; DOCKET NUMBER: 2010-1685-AIR-E; IDENTIFIER: RN100859255; LOCATION: Houston, Harris County; TYPE OF FACILITY: asphalt production plant; RULE VIOLATED: 30 TAC §§101.20(1), 111.111(a)(1)(B), and 116.115(c), 40 Code of Federal Regulations (CFR) §60.92(a)(2), NSR Permit Number 21258 SC Number 5, and THSC, §382.085(b), by failing to prevent unauthorized visible emissions from the baghouse stack (Emission Point number D-1); 30 TAC §116.115(c), NSR Permit Number 21258, SC Number 6D and THSC, §382.085(b), by failing to keep the plant roads watered as necessary to achieve maximum control of dust emissions; 30 TAC §116.115(b)(2)(E)(i) and (iv) and (c), NSR Permit Number 21258, SC Number 14B and THSC, §382.085(b), by failing to maintain records of the continuous temperature of the hot mix as monitored in the mixing section of the drum; PENALTY: \$2,750; SEP offset amount of \$1,100 applied to Barbers Hill Independent School District Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Gena Hawkins, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: CHAI EXPRESS INCORPORATED; DOCKET NUMBER: 2011-0081-PST-E; IDENTIFIER: RN102073319; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline products; RULE VIOLATED: 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 at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.10(b)(1)(B), by failing to maintain copies of all required records pertaining to the UST system and to make them immediately available for inspection upon request by agency personnel; PENALTY: \$2,975; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City Concrete, Incorporated; DOCKET NUMBER: 2010-2071-WR-E; IDENTIFIER: RN106031172; LOCATION: Jack County; TYPE OF FACILITY: portable concrete batch plant; RULE VIOLATED: the Code, §11.121 and 30 TAC §297.11, by failing to obtain a temporary water right permit prior to diverting, storing, impounding, taking, or using state water; PENALTY: \$375; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: City of Caddo Mills; DOCKET NUMBER: 2010-1901-MWD-E; IDENTIFIER: RN104798681; LOCATION: Hunt County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TPDES Permit Number WQ0010425001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, 30 TAC §305.125(1), and the Code, §26.121(a), by failing to comply with permitted effluent limits for ammonia nitrogen (NH₃N), DO, TSS, and five-day carbonaceous biochemical oxygen demand (CBOD₅); PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Houston; DOCKET NUMBER: 2010-1955-PST-E; IDENTIFIER: RN102400785; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Tate Barrett, (713) 422-8968; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: City of Linden; DOCKET NUMBER: 2010-2024-PWS-E; IDENTIFIER: RN101220986; LOCATION: Linden, Cass County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.46(f)(3)(A)(iv), by failing to maintain records of the dates dead-end mains were flushed; 30 TAC §290.46(e)(4)(C), by failing to employ at least two operators who hold a Class C or higher groundwater license for a groundwater system serving more than 1,000 connections; 30 TAC §290.43(c)(3), by failing to provide the overflow pipe on the elevated storage tank with a gravity-hinged and weighted cover that fit tightly with no gap over 1/16 inch; 30 TAC §290.44(h)(1)(A), by failing to install a backflow prevention assembly or an air gap at all residences and establishments where an actual or potential contamination hazard exists; and 30 TAC §290.46(u), by failing to plug and seal an abandoned public water supply well in

accordance with 16 TAC Chapter 76 or test the well every five years or as required by the executive director to prove that the well is in a non-deteriorated condition; PENALTY: \$2,635; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3672; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2010-2001-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), THSC, §382.085(b) and Permit Numbers 5920A and PSD-TX-103M3, SCs Number 1, by failing to prevent unauthorized emissions; PENALTY: \$10,000; SEP offset amount of \$4,000 applied to Brazoria County - Brazoria County Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: DANESH GROUP CORPORATION dba Manor Food Store; DOCKET NUMBER: 2010-1859-PST-E; IDENTIFIER: RN101435378; LOCATION: Manor, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 2800 S IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(12) COMPANY: Delton Osborn (FC); DOCKET NUMBER: 2011-0305-WOC-E; IDENTIFIER: RN103636460; LOCATION: Justiceburg, Garza County; TYPE OF FACILITY: occupational licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(13) COMPANY: Diamond Shamrock Refining Company, Limited Partnership; DOCKET NUMBER: 2010-1410-AIR-E; IDENTIFIER: RN100210517; LOCATION: Sunray, Moore County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §111.111(a)(1)(A) and §116.715(a), Flexible Permit Numbers 9708 and PSDTX861M2, SC Number 2, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §111.111(a)(1)(A) and §116.715(a), Flexible Permit Numbers 9708 and PSDTX861M2, SC Number 2, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(1)(G) and (H) and THSC, §382.085(b), by failing to properly report Incident Number 138521, 30 TAC §111.111(a)(1)(A) and §116.715(a), Flexible Permit Numbers 9708 and PSDTX861M2, SC Number 2, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.715(a), Flexible Permit Numbers 9708 and PSDTX861M2, SC Number 2, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §111.111(a)(1)(A) and §116.715(a), Flexible Permit Numbers 9708 and PSDTX861M2, SC Number 2, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$60,433; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109, (806) 353-9251.

(14) COMPANY: FIN & FEATHER RESORT, LLC; DOCKET NUMBER: 2010-1829-MWD-E; IDENTIFIER: RN101608081; LOCATION: Sabine County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0012143001 Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations for BOD and TSS;

PENALTY: \$2,300; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Flint Hills Resources Port Arthur, LLC; DOCKET NUMBER: 2010-1865-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), FOP Number O-01317, STC Number 22, and Flexible Air Permit Numbers 16989 and PSD-TX-794, SC Number 1, by failing to prevent unauthorized emissions; PENALTY: \$20,000; SEP offset amount of \$8,000 applied to Southeast Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 899-8785; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: INEOS USA, LLC; DOCKET NUMBER: 2010-1421-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), NSR Flexible Permit Numbers 95 and PSD-TX-854M2, SC Number 1, FOP Number O-02327, STC Number 18, by failing to comply with the nitrogen oxides (NO_x) annual maximum allowable emission rate (MAER) for the NO_x Other Source Routine Emission Cap; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), NSR Flexible Permit Numbers 95 and PSD-TX-854M2, SC Number 1, FOP Number O-02327, STC Number 18, and THSC, §382.085(b), by failing to comply with the NO_x hourly MAER for the NO_x Furnace Emission Cap-Phase II; 30 TAC §117.310(c)(2) and THSC, §382.085(b), by failing to limit the 24-hour average ammonia (NH₃) concentration to 10 parts per million by volume (ppmv) for Pyrolysis Furnaces Emission Point Numbers (EPNs) DB105, DB106, DB107, DB108, and DB109 from October 2, 2007 - September 24, 2008; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), NSR Flexible Permit Numbers 95 and PSD-TX-854M2, SC Number 13, FOP Number O-02327, STC Number 18, and THSC, §382.085(b), by failing to limit the NO_x emission rate from Pyrolysis Furnaces EPNs DB105, DB106, DB107, DB108, and DB109 to below 0.05 pounds per million British thermal units (lb/MMBtu) from October 22, 2007 - September 29, 2008; 30 TAC §§101.20(1) - (3), 115.354(2)(B) and (C), 115.781(b), 116.715(a), and 122.143(4), 40 CFR §§60.482-2(a)(1), 60.482-7(a)(1), 63.163(b)(1), 63.168(b), and 63.174(a); NSR Flexible Permit Numbers 95 and PSD-TX-854M2, SC Numbers 34.F., 34.G., by failing to monitor, with a hydrocarbon gas analyzer, two pumps, 38 valves, and 20 flanges/connectors in the Olefins 2 Unit from April 1, 2006 - July 8, 2008; 30 TAC §§101.20(1) - (3), 115.354(2)(B) and (C), 116.715(a), and 122.143(4), 40 CFR §§60.482-2(a)(1), 60.482-7(a)(1), 63.163(b)(1), 63.168(b), and 63.174(a), NSR Flexible Permit Number 95 and PSD-TX-854M2, SC Numbers 34.F., 34.G., 35.G by failing to monitor, with a hydrocarbon gas analyzer, one pump, 133 valves, and 133 flanges/connectors in the Tank Farm from October 1, 2007 - August 14, 2008; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), NSR Flexible Permit Numbers 95 and PSD-TX-854M2, SC Number 1, FOP Number O-02327, STC Number 18, and THSC, §382.085(b), by failing to comply with the carbon monoxide (CO) hourly MAER for the Furnace Emission Cap-Phase I; and 30 TAC §§101.20(3), 116.715(a), and 122.143(4), NSR Flexible Permit Numbers 95 and PSD-TX-854M2, SC Number 1, FOP Number O-02327, STC Number 18, and THSC, §382.085(b), by failing to comply with the NH₃ hourly MAER for the Furnace Emission Cap-Phase I for Pyrolysis Furnaces EPNs DB105, DB106, DB107, DB108, and DB109; PENALTY: \$411,776; SEP offset amount of \$164,710 applied to Brazoria County - Brazoria County Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Miriam

Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: J&J Homes, Corporation; DOCKET NUMBER: 2010-1915-WQ-E; IDENTIFIER: RN106021124; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to develop and implement a storm water pollution prevention plan (SWP) and obtain authorization to discharge storm water associated with construction activities; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: K.L. Comfort Park, Limited; DOCKET NUMBER: 2010-2088-PWS-E; IDENTIFIER: RN101223600; LOCATION: Temple, Bell County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(f)(2) and (f)(3)(D)(i) and TCEQ Agreed Order Docket Number 2007-0789-PWS-E, Ordering Provision Number 2.a.iv., by failing to keep on file and make available for review an up-to-date record of water works operations and maintenance activities for operator review and reference; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to insure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; and 30 TAC §290.45(f)(1), by failing to provide a signed, written water purchase contract to the executive director in order to properly evaluate production, storage, service pump or pressure maintenance capacity; PENALTY: \$422; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Memorial Point Utility District; DOCKET NUMBER: 2010-2002-PWS-E; IDENTIFIER: RN101457802; LOCATION: Livingston, Polk County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification within 24 hours using the prescribed format as specified in 30 TAC §290.47(e); 30 TAC §290.46(f)(3)(A)(iii), by failing to keep on file and make available for review at the facility a record of the date, location, and nature of water quality, pressure, or outage complaints received by the Respondent and the results of any subsequent complaint investigation; and 30 TAC §290.46(q)(2), by failing to follow the flowchart found in 30 TAC §290.47(h) to determine if a boil water notification must be issued in the event of a loss of distribution system pressure; PENALTY: \$710; ENFORCEMENT COORDINATOR: Kelly Wisian, (512) 239-2570; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Pearsall Ventures, Incorporated dba Pearsall Shell; DOCKET NUMBER: 2010-1904-PST-E; IDENTIFIER: RN102778743; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(4)(A)(ii)(II) and the Code, §26.3475(c)(1), by failing to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour from any portion of the UST system; PENALTY: \$3,250; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Regency Field Services, LLC; DOCKET NUMBER: 2010-2014-AIR-E; IDENTIFIER: RN102176377; LOCATION: Eustace, Henderson County; TYPE OF FACILITY: natural gas refin-

ing plant; RULE VIOLATED: 30 TAC §§122.121, 122.133(2), and 122.241(b), and THSC, §382.054 and §382.085(b), by failing to submit an application for renewal at least six months prior to expiration of a permit and continued to operate the plant without authorization after the permit expired; and 30 TAC §§101.20(1), 122.143(4) and 122.145(1)(C), 40 CFR §60.636(c), FOP Number O-0863 GTC, and THSC, §382.085(b), by failing to submit the semi-annual new source performance standard volatile organic compound (VOC) leak monitoring reports no later than 30 days after the end of the reporting period; PENALTY: \$9,743; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(22) COMPANY: RSN ENTERPRISES, INCORPORATED dba Ella Shell; DOCKET NUMBER: 2011-0013-PST-E; IDENTIFIER: RN102990769; 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 at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Mike Pace, (817)588-5933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: SBJ INVESTMENTS, INCORPORATED dba Haley's One Stop; DOCKET NUMBER: 2010-1961-PST-E; IDENTIFIER: RN101433613; LOCATION: Burleson, Johnson 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 ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118, (817) 588-5800.

(24) COMPANY: Shell Chemical Limited Partnership; DOCKET NUMBER: 2010-1889-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), THSC, §382.085(b), and NSR Permit Numbers 3219 and PST-TX-974, SC Number 1, by failing to prevent unauthorized emissions during an emissions event that occurred on May 27, 2010; PENALTY: \$10,000; SEP offset amount of \$4,000 applied to Barbers Hill Independent School District Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Shell Oil Company; DOCKET NUMBER: 2010-1538-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: petroleum refining; RULE VIOLATED: 30 TAC §101.20(5) and §116.715, THSC, §382.085(b), Flexible Permit Numbers 21262 and PSDTX928, SC Number 1, by failing to prevent unauthorized emissions during an emissions event that occurred on May 7, 2010; PENALTY: \$10,000; SEP offset amount of \$4,000 applied to Barbers Hill Independent School District Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Sufian Emmar dba Yager Food Store; DOCKET NUMBER: 2011-0125-PST-E; IDENTIFIER: RN102783982; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: \$1,875;

ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2800 S IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(27) COMPANY: Tom Green County Fresh Water Supply District 2; DOCKET NUMBER: 2010-1414-PWS-E; IDENTIFIER: RN101426047; LOCATION: Christoval, Tom Green County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.42(d)(15)(C)(vi), by failing to provide jar tests for determining the optimum coagulant dose; 30 TAC §290.46(s)(1), by failing to calibrate flow measuring devices at least once every 12 months; 30 TAC §290.46(s)(2)(B)(i), by failing to calibrate the benchtop turbidimeter with primary standards at least every 90 days; 30 TAC §290.46(f)(3)(E)(i), by failing to maintain on file and make available for commission review accurately completed copies of surface water monthly operating reports; 30 TAC §290.46(f)(3)(B)(v) and TCEQ Agreed Order Docket Number 2009-1374-PWS-E, Ordering Provision Number 2.a.i, by failing to maintain records of the calibration conducted on the on-line turbidimeters; and 30 TAC §290.46(s)(2)(B)(iv) and TCEQ Agreed Order Docket Number 2009-1374-PWS-E, Ordering Provision Number 2.a.ii, by failing to check the calibration of the online turbidimeters at least once a week using a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the online unit with the results from a properly calibrated benchtop unit; PENALTY: \$604; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(28) COMPANY: Venus Operating Corporation dba Venus Corner Store; DOCKET NUMBER: 2010-1921-PST-E; IDENTIFIER: RN102447851; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system (VRS); 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS; and 30 TAC §115.246(1) and (3) and THSC, §382.085(b), by failing to maintain Stage II records at the station; PENALTY: \$2,918; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Veolia ES Technical Solutions, L.L.C.; DOCKET NUMBER: 2010-1870-IWD-E; IDENTIFIER: RN103219002; LOCATION: Jefferson County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: the Code, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0002417000, Effluent Limitations and Monitoring Requirements Number 1 for Outfalls 001 and 101, by failing to comply with permitted effluent limitations for chemical oxygen demand, cadmium, copper, lead, mercury, BOD₅, and TSS; PENALTY: \$11,500; SEP offset amount of \$4,600 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Thomas Jecha, P.G., (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(30) COMPANY: West Cedar Creek Municipal Utility District; DOCKET NUMBER: 2010-1792-MWD-E; IDENTIFIER: RN101610723; LOCATION: Tool, Henderson County; TYPE OF FACILITY: domestic wastewater treatment system; RULE VIOLATED: the Code, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0011839001, Effluent Limitation and Monitoring Requirements Number 1, by failing to comply with permitted effluent

limits for TSS, CBOD₅, and NH₃-N; and 30 TAC §305.125(17) and TPDES Permit Number WQ0011839001 Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2009; PENALTY: \$1,169; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(31) COMPANY: William Donald Smith dba Kingmont Mobile Home Park; DOCKET NUMBER: 2011-0023-MWD-E; IDENTIFIER: RN101701555; LOCATION: Houston, Harris County; TYPE OF FACILITY: domestic wastewater treatment plant; RULE VIOLATED: the Code, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0013770001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits for NH₃-N; and 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0013770001, Monitoring and Reporting Requirements Number 1, by failing to submit the DMR for the monitoring period ending April 30, 2010; PENALTY: \$6,080; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201101062
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 15, 2011



Notice of Correction to Agreed Order Number 10

In the March 4, 2011, issue of the *Texas Register* (36 TexReg 1599), the Texas Commission on Environmental Quality (commission) published a notice of Agreed Order Number, specifically Item Number 10. The reference to Shell Oil Company was submitted in error by the commission as Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 and instead should have been submitted as Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914.

For questions concerning this error, please contact Laurencia Fasoyiro at (713) 422-8914.

TRD-201101063
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 15, 2011



Notice of the Executive Director's Response to Public Comments on General Permit Number TXG130000

The executive director of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Public Comment (Response) on Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG130000. As required by Texas Water Code (TWC), §26.040(d) and 30 Texas Administrative Code (30 TAC) §205.3(c), before a general permit is issued, the executive director must prepare a response to all timely, relevant and material, or significant comments. The response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the commission considers the approval of the general permit. This response addresses all timely received public comments, whether or not withdrawn. Timely public comments were received from the Texas Parks and Wildlife Department (TPWD).

Background

This general permit would authorize discharges from concentrated aquatic animal production facilities, aquatic animal production facilities, and certain activities related to the propagation or rearing of aquatic species through the use of ponds, lakes, fabricated tanks and raceways, or other similar structures. This permit is proposed under the statutory authority of: 1) TWC, §26.121, which makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission; 2) TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for discharge of waste or pollutants into or adjacent to water in the state; and 3) TWC, §26.040, which provides the commission with authority to amend rules to authorize waste discharges by general permit.

On September 14, 1998, the TCEQ received authority from the United States Environmental Protection Agency (EPA) to administer the TPDES program. TCEQ and the EPA have a Memorandum of Agreement which authorizes the administration of the National Pollutant Discharge Elimination System program by the TCEQ as it applies to the State of Texas.

Notice of the proposed permit was published in the *Dallas Morning News*, *Houston Chronicle*, and *Corpus Christi Caller-Times* on September 28, 2010 and in the *Texas Register* on October 1, 2010.

The Office of Chief Clerk received a timely public comment letters from TPWD.

Comments and Responses

Comment: TPWD made editorial comments on punctuation errors within the proposed permit and Fact Sheet and Executive Director's Preliminary Decision.

Response: All the specific punctuation errors noted by TPWD were addressed and the appropriate changes were made.

Comment: TPWD comments that to be consistent with text in other sections of the proposed permit, the bullet point addressing cage culture in the Notice of Level 1 authorization should be revised to read: "An aquaculture facility that utilizes cages or other enclosures placed within public waters for the propagation of rearing of aquatic species with a harvest weight equal to or less than 10,000 pounds."

Response: This item was changed as requested to be consistent with the changes made in Part II Section B.1.f. of the permit.

Comment: TPWD comments that for consistency with the proposed permit, the phrase within Fact Sheet III.A.3(b)(i) should be changed from "discharge at least 30 days per year; or. . ." to "discharge at least 30 days per year, and. . . ."

Response: The change was made as requested. The Fact Sheet should read to "discharge at least 30 days per year, and. . . ."

Comment: TPWD questions whether Fact Sheet XIV.C. should include the aquaculture memorandum of understanding (MOU) in the rules cited.

Response: The MOU found at Chapter 7 was included in the rules cited in the Fact Sheet XIV. The MOU requires the commission, the TPWD and the Texas Department of Agriculture (TDA) to work collaboratively in the regulation of aquaculture which resulted in specific requirements being included in the general permit.

TRD-201101049
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 15, 2011



Notice of Water Quality Applications

The following notice was issued on March 4, 2011 through March 11, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF JEFFERSON has applied for a renewal of TPDES Permit No. WQ0010801001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 620,000 gallons per day. The facility is located approximately 2,200 feet east of U.S. Highway 59 at the north end of North Line Street in Marion County, Texas 75657.

TERRA RENEWAL SERVICES INC has applied for a new permit, Proposed TCEQ Permit No. WQ0004943000, to authorize the land application of wastewater treatment plant sewage sludge and water treatment plant sludge for beneficial use on 112.2 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sewage sludge land application site will be located adjacent to the west side of County Road 3201, approximately 1.9 miles west of the intersection of County Road 3201 and County Road 3112, approximately 1.7 miles north of the intersection of County Road 3112 and State Highway 49, and approximately 2.5 miles west of the City of Daingerfield in Morris County, Texas 75571.

TERRA RENEWAL SERVICES INC has applied for a new permit, Proposed TCEQ Permit No. WQ0004947000, to authorize the land application of wastewater treatment plant sewage sludge and water treatment plant sludge for beneficial use on 343 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sludge land application site will be located adjacent to the east side of County Road 1233, approximately 2.9 miles north of the intersection of County Road 1233 and State Highway 49, approximately 6.1 miles north of the City of Daingerfield.

CITY OF CADDO MILLS has applied for a renewal of TPDES Permit No. WQ0010425001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 0.7 mile south of the intersection of State Highway 66 and Farm-to-Market Road 36 in Hunt County, Texas 75135.

EAST MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 4 has applied for a renewal of TPDES Permit No. WQ0014311001, 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 4,000 feet northwest of the intersection of U.S. Highway 59 and State Highway 242 in Montgomery County, Texas 77357.

DEL GRANDE MOBILE HOME OWNERS ASSOCIATION INC has applied for a renewal of TCEQ Permit No. WQ0014605001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 18,000 gallons per day via surface irrigation of 9.5 acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located 0.2 mile south of U.S. Highway 90 and 0.3 mile west of Bayview Road in Val Verde County, Texas 78840.

CITY OF SABINAL has applied for a renewal of TPDES Permit No. WQ0014689001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 340,000 gallons per day. The facility is located approximately 5,300 feet south of the intersection of State Highway 187 and Dunlap Avenue, along Dunlap Avenue and Rhylander Road (County Road 386) in Uvalde County, Texas 78881.

AMERICAN WATER OPERATIONS AND MAINTENANCE INC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014994001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 3,000 feet north of Sparta Road at Blora Recreational Area on Fort Hood in Bell County, Texas 76544.

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-201101080

LaDonna Castañuela
Chief Clerk

Texas Commission on Environmental Quality
Filed: March 16, 2011



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on March 14, 2011, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Advantage Asphalt Products, Ltd.; SOAH Docket No. 582-08-0523; TCEQ Docket No. 2007-0768-AIR-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Advantage Asphalt Products, Ltd. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201101081

LaDonna Castañuela
Chief Clerk

Texas Commission on Environmental Quality
Filed: March 16, 2011



Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Semiannual Report due January 18, 2011 for Candidates and Officeholders

Gina M. Benavides, 817 E. Esperanza Ave., McAllen, Texas 78501-1403

Stephen K. Brown II, 518 Hawthorn Pl., Missouri City, Texas 77459

Jesus M. "Chuy" Dominguez, 201 W. Hillside, Ste. 17, Laredo, Texas 78041

George E. Emery, 3005 Kuhlman Ave., Austin, Texas 78702-2930

Michael A. Franks, 20230 Kings Camp Dr., Katy, Texas 77450-4322

Borris Lee Miles, 5302 Almeda Rd., Houston, Texas 77004

Kathleen M. Shaw, 812 Parkside Dr., Cedar Hill, Texas 75104

Gena N. Slaughter, 3109 Knox St. #313, Dallas, Texas 75205

Gary Louis Wilson, Jr., 810 11th Ave. North, Texas City, Texas 77590

Deadline: Semiannual Report due January 18, 2011 for Committees

Leslie A. Gower, Hidalgo County Texas Democratic Women, 712 Walnut, McAllen, Texas 78501

Deadline: Lobby Activities Report due January 10, 2011

Shanon G. DiSorbo, 14450 JFK Blvd., Ste. 400, Houston, Texas 77032

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709

TRD-201100982

David Reisman

Executive Director

Texas Ethics Commission

Filed: March 9, 2011



List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Semiannual Report due January 18, 2011 for Candidates and Officeholders

Rick Agosto, 410 Balfour Dr., San Antonio, Texas 78239-2521

Susan E. Anderson, P.O. Box 822671, Dallas, Texas 75382

Daniel Rodriguez Andrade, 780 Cedar Pkwy., Seguin, Texas 78155

Larry W. Baraka, 10000 N. Central Expy, Ste. 400, Dallas, Texas 75231

Vicente N. Carranza, 3690 Jack Dr., Robstown, Texas 78380

Barry N. Cooper, 401 Little Texas Ln. #1415, Austin, Texas 78745-4133

Frank J. Corte, Jr., 4203 Honeycomb St., San Antonio, Texas 78230-1403

Guadalupe A. Gonzalez, 2111 Dorado Dr., Mission, Texas 78573

Mary K. Huls, 2715 Cross Tide Ln., Friendswood, Texas 77546

Gary W. Inmon, 2501 FM 3009, Ste. 200, Schertz, Texas 78154

Donald J. Large, 5499 Braesvalley #466W, Houston, Texas 77096

Star Locke, P.O. Box 338, Port Aransas, Texas 78373

Stephen D. McGee, 2621 Lucas Dr., Dallas, Texas 75219

Rick Melendrez, 3030 Altura Ave., El Paso, Texas 79930

Socorro G. 'Choco' Meza, 13707 Cape Bluff, San Antonio, Texas 78216

Rick W. Neudorff, 3800 Pebblecreek Ct. #219, Plano, Texas 75023

Alice J. O'Neill, 448 W. 19th St., Box 345, Houston, Texas 77008

Bruce Priddy, 17327 Davenport Rd., Dallas, Texas 75248-1367

Daniel G. Rios, 323 Nolana Loop, McAllen, Texas 78504-2514

Vernard G. Solomon, 103 E. Houston, Marshall, Texas 75670

Lindy Suze, 1430 Breckenridge, Mansfield, Texas 76063

Gregory A. Thomas, 4044 Pringle Dr., Dallas, Texas 75212

Ruben D. Torres, 111 Primrose, Livingston, Texas 77351

Deadline: Semiannual Report due January 18, 2011 for Committees

Christopher L. Gay, Wichita Falls Police Officers Assn. PAC, 3229 Industrial Dr., Wichita Falls, Texas 76306

Ricardo R. Godinez, South Texas Economic Alliance Political Action Committee, 2415 N. 10th St., McAllen, Texas 78501-4005

Robert E. Johnson, Jr., Gulf Greyhound Partners and Employees PAC, 1122 Colorado #208, Austin, Texas 78701

Sandra R. Kuprion-Thomas, ATTACK PAC, The Anti-Crime PAC, 3131 McKinney Ave., Ste. 720, Dallas, Texas 75204

Dagmar Jung Mack, Legislation Action Council for LTC, 419 E. Sherman Dr., Denton, Texas 76209

Christy Munoz, Una Voz Unida PAC, 1206 Alameda Ave., Odessa, Texas 79763-3667

John H. Spivey, Trinity River Improvement Partnership PAC, 2101 Tar-rant Ln., Colleyville, Texas 76034

Selena Walsh-Wheeler, Buena Vista PAC, 2300 E. 8th St., Austin, Texas 78702

Dean G. Wright, New Revolution Now PAC, Inc., 4401 Mesquite Sp. Cv., Austin, Texas 78735

Deadline: Lobby Activities Report due December 10, 2010

Thomas Rene Aguillon, 1900 Blue Crest Ln., San Antonio, Texas 78247

Deadline: Lobby Activities Report due January 10, 2011

Joe W. Arnold, 1108 Lavaca St., Ste. 110#116, Austin, Texas 78701

Alan R. Erwin, 1210 San Antonio, Ste. 700, Austin, Texas 78701

David E. Garland, Baylor University, One Bear Pl. #97133, Waco, Texas 76798

Anthony Haley, 301 Congress Ave., Ste. 1700, Austin, Texas 78701

Cynthia K. Humphrey, 169 Catalina Ct., Kerrville, Texas 78028

Karla Leeper, Baylor University, One Bear Pl. #97133, Waco, Texas 76798

Bee Moorhead, 221 E. 9th St., Ste. 403, Austin, Texas 78701

Heather Paffe, 44 E. Ave., Ste. 304, Austin, Texas 78701

Karen Kenny Reagan, 702 Rio Grande, Austin, Texas 78701

Joshua Sanders, 5300 Memorial Dr., Ste. 1070, Houston, Texas 77007

Thomas E. Smith, 1303 San Antonio St., Austin, Texas 78701

Todd M. Smith, 2204 Hazeltine Ln., Austin, Texas 78747

Ken Starr, Baylor University, One Bear Pl. #97133, Waco, Texas 76798

Carlos A. Truan Jr., 10900 Research Blvd., Ste. 160-C, Austin, Texas 78759

TRD-201101006

David Reisman

Executive Director

Texas Ethics Commission

Filed: March 11, 2011



Office of the Governor

Request for Grant Applications for the Crime Stoppers Assistance Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting grant applications to support certified Crime Stoppers organizations in Texas during the state fiscal year 2012 grant cycle.

Purpose: The purpose of the Crime Stoppers Assistance funding is to enhance and assist the community's efforts in solving serious crimes.

Available Funding: State funding is authorized for these projects under Article 102.013, Texas Code of Criminal Procedure, which designated CJD as the funds administering agency. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees.

Funding Levels:

- (1) Minimum grant award - \$1,500.
- (2) Maximum grant award - \$10,000.

Required Match: None.

Standards: Grantees must comply with the standards applicable to this funding source cited in the *Texas Administrative Code* (1 TAC Chapter 3) and all statutes, requirements and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- (1) proselytizing or sectarian worship;
- (2) lobbying and administrative advocacy;
- (3) promotional advertisements of any kind;
- (4) entertainment or refreshments;
- (5) subscription fees or dues;
- (6) fundraising activities;
- (7) office space rental;
- (8) extended equipment services arrangements;
- (9) contributions;
- (10) purchase or improvement of real estate;
- (11) rewards, except for statewide projects; and
- (12) attorney fees.

Eligible Applicants: Crime Stoppers organizations as defined by §414.001(2) of the Texas Government Code that are certified by the Texas Crime Stoppers Council to receive repayments under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of

Criminal Procedure. Section 414.001(2) of the Texas Government Code defines a "crime stoppers organization" as follows:

(1) a private, nonprofit organization that is operated on a local or statewide level, that accepts and expends donations for rewards to persons who report to the organization information about criminal activity and that forwards the information to the appropriate law enforcement agency; or

(2) a public organization that is operated on a local or statewide level, that pays rewards to persons who report to the organization information about criminal activity, and that forwards the information to the appropriate law enforcement agency.

Requirements: Crime Stoppers programs must focus on reducing crime through the operation of a hotline that receives information about criminal activities and fugitives from members of the public, guarantees anonymity, forwards the information to the appropriate law enforcement agency, and pays rewards.

Project Period: Grant-funded projects must begin on or after September 1, 2011, and expire on or before August 31, 2012.

Application Process: Applicants can access CJD's eGrants website at <https://eGrants.governor.state.tx.us> to register and apply for funding.

Preferences: Preference will be given to projects that support information systems such as 24-hour tip hotlines, technology upgrades, and participation in the annual campus conference.

Closing Date for Receipt of Applications: All applications must be certified via CJD's eGrants website on or before June 1, 2011.

Selection Process: Applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Information: If additional information is needed, contact the eGrants Help Desk at eGrants@governor.state.tx.us, Betty Bosarge at betty.bosarge@governor.state.tx.us or (512) 463-1784.

TRD-201101087

Kate Fite

Assistant General Counsel

Office of the Governor

Filed: March 16, 2011



Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the award of contract 529-06-0425-00045 to **Bailit Health Purchasing, Inc.** an entity with a principal place of business at 56 Pickering Street, Needham, MA 02492. The contractor will assist Medicaid/CHIP Division in fully implementing value-based purchasing in Medicaid/CHIP managed care products and services. The goals of this initiative are to improve the quality of care provided to Medicaid/CHIP enrollees while reducing total program costs.

The total value of the contract with Bailit Health Purchasing, Inc. is \$250,000.00. The contract was executed on January 6, 2011 and will expire on November 30, 2011, unless extended or terminated sooner by the parties. Bailit Health Purchasing, Inc. will produce numerous documents and reports during the term of the contract, with the final reporting due by November 30, 2011.

TRD-201100983

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: March 10, 2011



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of the amendment is to update the website address where Medicaid provider fee schedules and reimbursement rates can be accessed. The requested effective date for the proposed amendment is April 1, 2011. The proposed amendment has no anticipated fiscal impact.

To obtain copies of the proposed amendment, interested parties may contact James Jenkins by mail at 11209 Metric Boulevard, H-400, Austin, Texas 78758; by telephone at (512) 491-2865; by facsimile at (512) 491-1973; or by e-mail at james.jenkins@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Department of Aging and Disability Services.

TRD-201101072
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: March 15, 2011



Public Notice

The Texas Health and Human Services Commission announce its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective April 1, 2011.

The amendment will modify the reimbursement methodology for clinical laboratory services in the Texas Medicaid State Plan as a result of Medicaid fee changes.

The proposed amendment is estimated to result in an additional annual aggregate savings of \$2,094,578 for the remainder of federal fiscal year (FFY) 2011, with approximately \$1,327,962 in federal funds and \$766,616 in state funds. For FFY 2012, the estimated additional aggregate savings is \$4,434,993, with approximately \$2,582,053, in federal funds and \$1,852,940 in state funds. For FFY 2013, the estimated reduced aggregate expenditure is \$4,583,983, with approximately \$2,630,290 in federal funds and \$1,953,693 in state funds.

Interested parties may obtain copies of the proposed amendment by contacting Chris Dockal, Hospital Reimbursement, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1467; by facsimile at (512) 491-1998; or by e-mail at chris.dockal@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201101082
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: March 16, 2011



Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective April 1, 2011.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for Physicians and Certain Other Practitioners and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS).

The proposed amendments are estimated to result in an additional annual aggregate expenditure of \$199,321 for federal fiscal year (FFY) 2011, with approximately \$132,469 in federal funds and \$66,852 in State General Revenue (GR). For FFY 2012, the estimated additional aggregate expenditure is \$424,694, with approximately \$247,257 in federal funds and \$177,437 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201101098
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: March 16, 2011



Department of State Health Services

Notice of Amendment to the Texas Schedules of Controlled Substances

This amendment was signed by David L. Lakey, M.D., Commissioner of the Department of State Health Services, on March 14, 2011, and will become effective twenty-one days after the date of publication of this notice in the *Texas Register*.

The Deputy Administrator of the Drug Enforcement Administration (DEA) placed the substance 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT) into Schedule I of the Schedules of Controlled Substances under the authority of the United States Controlled Substances Act (USCSA) effective January 19, 2011. This final rule was published in the *Federal Register*, Volume 75, Number 243, pages 79296 - 79300. The Deputy Administrator of the DEA has taken this action based on a scheduling recommendation from the Assistant Secretary for Health of the Department of Health and Human Services and on the following:

- (1) 5-MeO-DMT has a high potential for abuse;
- (2) 5-MeO-DMT has no currently accepted medical use in treatment in the United States; and
- (3) There is a lack of accepted safety for use of 5-MeO-DMT under medical supervision.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced action was published in the *Federal Register*; and, in the capacity as Commissioner of the Department of State Health Services, David L. Lakey, M.D., ordered that the substance 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT) be added to Schedule I hallucinogenic sub-

stances and numbers (18) through (36) be redesignated as (19) through (37) of the Texas Controlled Substances Act.

SCHEDULE I

Schedule I consists of:

Schedule I opiates

Schedule I opium derivatives

Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);

(2) alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;

(3) 4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA);

(4) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);

(5) 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA);

(6) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers;

(8) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;

(9) 5-methoxy-3,4-methylenedioxy-amphetamine;

(10) 4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(11) 1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);

(12) 4-methyl-2,5-dimethoxyamphetamine (some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methyl-phenethylamine; "DOM"; and "STP");

(13) 3,4-methylenedioxy-amphetamine;

(14) 3,4-methylenedioxy-methamphetamine (MDMA, MDM);

(15) 3,4-methylenedioxy-N-ethylamphetamine (some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);

(16) 3,4,5-trimethoxy amphetamine;

(17) N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

*(18) 5-methoxy-N,N-dimethyltryptamine (Some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);

(19) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; map-pine);

(20) Diethyltryptamine (some trade and other names: N,N-Diethyl-tryptamine; DET);

(21) Dimethyltryptamine (some trade and other names: DMT);

(22) Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);

(23) Ibogaine (some trade or other names: 7-Ethyl-6,6-beta, 7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2] azepino [5,4-b] indole; taber-nanthe iboga);

(24) Lysergic acid diethylamide;

(25) Marihuana;

(26) Mescaline;

(27) N-benzylpiperazine (some other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers;

(28) N-ethyl-3-piperidyl benzilate;

(29) N-methyl-3-piperidyl benzilate;

(30) Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);

(31) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(32) Psilocybin;

(33) Psilocin;

(34) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1-phenyl-cyclohexyl)-pyrrolidine, PCPy, PHP);

(35) Tetrahydrocannabinols;

meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers; and

3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered);

(36) Thiophene analog of phencyclidine (some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-thienyl analog of phencyclidine; TPCP); and

(37) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some trade or other names: TCPy).

Schedule I stimulants

Schedule I depressants

Changes to the Schedules are designated by a single asterisk (*)

TRD-201101052

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: March 15, 2011



Texas Department of Housing and Community Affairs

Announcement of the Opening of the Public Comment Period for the Draft 2011 State of Texas Consolidated Plan Annual Performance Report - Reporting on Program Year 2010

The Texas Department of Housing and Community Affairs (the Department) announces the opening of a 15-day public comment period for the *State of Texas Draft 2011 Consolidated Plan Annual Performance Report - Reporting on Program Year 2010* (the Report) as required by the U.S. Department of Housing and Urban Development (HUD). The Report is required as part of the overall requirements governing the State's consolidated planning process. The Report is submitted in compliance with 24 CFR §91.520, Consolidated Plan Submissions for Community Planning and Development Programs. The 15-day public comment period begins April 1, 2011, and continues until 5:00 p.m. on April 15, 2011.

The Report gives the public an opportunity to evaluate the performance of the past program year for four HUD programs: the Community Development Block Grant Program administered by the Texas Department of Rural Community Affairs, the Emergency Shelter Grants and HOME Investment Partnerships programs administered by the Department, and the Housing Opportunities for Persons with AIDS Program administered by the Texas Department of State Health Services. The following information is provided for each of the four programs covered in the Report: a summary of program resources and programmatic accomplishments; a series of narrative statements on program performance over the past year; a qualitative analysis of program actions and experiences; and a discussion of program successes in meeting program goals and objectives.

Beginning April 1, 2011, the Report will be available on the Department's website at www.tdhca.state.tx.us. A hard copy may be requested by contacting the Housing Resource Center at P.O. Box 13941, Austin, TX 78711-3941 or by calling (512) 475-3976.

Written comments should be sent by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, TX 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-1672.

TRD-201101078

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 16, 2011



Housing Trust Fund Program 2010 - 2011 Homebuyer Assistance Program Notice of Funding Availability (NOFA)

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately \$1.6 million in funding from the 2010-2011 Housing Trust Fund ("HTF") appropriation for the Homebuyer Assistance Program ("HBA Program"). Of this amount, 4 percent will be set-aside for an administrative fee paid to the Administrator upon the closing of each loan. In an effort to serve various populations throughout the state and improve upon the efficiency of the traditional funding method, a reservation system will be utilized with this Notice of Funding Availability ("NOFA"). Eligible Applicants must be approved by the Department to participate in the HBA Program and must execute a Loan Origination Agreement ("LOA") in order to originate loans under the HBA Program and utilize the Reservation System to secure these funds for an eligible Borrower.

The HBA Program serves First-Time Homebuyers and Veterans whose annual income does not exceed 80 percent of the Area Median Family Income ("AMFI"), as defined by the Department. Eligible Borrowers may receive up to a \$10,000 zero percent interest loan. Funds may be used for down payment, gap financing, and/or closing cost assistance for the acquisition of a Single Family Home that must be the principal residence for the eligible Borrower. The loan is repayable and amortized over a period between five and ten years, as selected by the Borrower. The first payment will be due no later than the sixty-first month after the first payment date of the Senior Lien loan.

Eligible Applicants are Units of Local Government, Nonprofit Organizations, Public Housing Authorities ("PHAs"), for-profit organizations or any other entity authorized by the Department's Executive Director.

The Department will begin accepting Applications to access the Reservation System starting on Friday, **March 7, 2011**, and will continue to grant access on an ongoing basis until the earlier of when all HBA Program funds are reserved, or until Friday **December 28, 2011**. This NOFA is not subject to the Regional Allocation Formula ("RAF"). Funds for the HBA Program were regionally allocated during the previous release of this NOFA on June 18, 2010 and these funds represent funds not utilized in the process.

The availability and use of these funds are subject to the Chapter 2306 of the Texas Government Code and 10 TAC Chapter 51, Housing Trust Fund Rules ("HTF Rules").

(1) Definitions.

(a) Definitions are provided in Chapter 2306 of the Texas Government Code and the HTF Rules. Any capitalized terms not specifically mentioned in the HTF Rules shall have the meanings ascribed to them in Chapter 2306 of the Texas Government Code and HTF Rules.

(b) In addition, this NOFA shall use the following definitions:

(i) Administrative Fee--Eligible costs to operate and administer the Program. The Administrator will be paid a 4 percent administration fee upon the closing of each loan. Administrative Fee must be requested at the same time as the funding request.

(ii) Administrator--A unit of government, nonprofit entity or other party who has a written signed agreement or Contract with the Department committing the Department to provide funds upon the completion of certain actions called for in the agreement or Contract.

(iii) Applicant--A person who has submitted an application for Department funds.

(iv) Borrower--An individual(s) who receives or borrows an amount of money from the Department and is a reservation pursuant to this NOFA

and is obligated to pay back or repay an equal amount of money to the Department at a later time.

(v) Contract--The executed written agreement between the Department and an Administrator performing an activity related to a program that outlines performance requirements and responsibilities assigned by the document.

(vi) Internet Loan Reservation System--The MITAS Internet Loan Reservation System collects general data regarding the mortgage the Borrower wishes to obtain. The MITAS Internet Loan Reservation System must be utilized by Administrators to reserve HBA Program funds as specified in this NOFA. This NOFA refers to the MITAS Internet Loan Reservation System as the Reservation System.

(vii) Department--The Texas Department of Housing and Community Affairs or any successor agency.

(viii) First-Time Homebuyer--

(I) An individual who has had no ownership in a principal residence during the three (3) year period ending on the date of purchase of the property;

(II) A single parent who has only owned with a former spouse while married;

(III) An individual who is a displaced homemaker and has only owned with a spouse;

(IV) An individual who has only owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations; and/or

(V) An individual who has only owned a property that was not in compliance with state, local building codes and which cannot be brought into compliance for less than the cost of constructing a permanent structure.

(ix) Funding Request--Program funds approved by the Department to be disbursed to the Administrator.

(x) Loan-to-Value ("LTV") Ratio--The amount of all mortgage liens as a percentage of the total appraised value of real property.

(xi) Project Costs--HBA Program funds that directly assist an eligible Borrower in the form of down payment, gap financing and/or closing costs.

(xii) Reservation--An amount of funds reserved for a specific Borrower whose eligibility has been verified by the Administrator and the Department.

(xiii) Reservation System--System (through the MITAS Internet Loan Reservation System) utilized by Administrators to reserve and draw HBA Program funds for the purposes specified in this NOFA.

(xiv) Senior Lien--A lien that takes priority over the Department's lien and any subsequent liens.

(xv) Setup--The submission of required information into the Reservation System in order to reserve HBA Program funds for an eligible Borrower for the activities specified in this NOFA.

(xvi) Single Family Home--A single-family detached unit, condominium unit, manufactured housing unit (as defined in the HTF Rules), townhome and/ or a single unit in a duplex or triplex.

(xvii) Veteran--A Veteran is a Person who:

(I) served no fewer than ninety (90) cumulative days on active duty (including active duty for training) in the Army, Navy, Air Force, Marines, Coast Guard, or U.S. Public Health Service (unless discharged sooner by reason of a service-connected disability); or

(II) has enlisted or received an appointment in the National Guard or a reserve component of one of the listed branches of service after completing all initial active duty training requirements as a condition of enlistment or appointment; or

(III) have completed twenty (20) years in a reserve component so as to be eligible for retirement; and

(IV) has not been dishonorably discharged. A person who has been discharged from the branch of the service in which the person served or from the National Guard is considered not to have been dishonorably discharged if the person:

(A) received an honorable discharge;

(B) received a discharge under honorable conditions; or

(C) received a discharge and provides evidence from the VA, its successor, or other competent authority that indicates that the character of the person's discharge has been determined to be other than dishonorable.

(V) The unmarried, surviving spouse of a Texas veteran who is missing in action (MIA) or who died in the line of duty or from a service-related cause may be eligible to participate in the programs. The veteran's home of record must have been Texas at the time of entry into the service, or the veteran must have been a legal resident of Texas at the time of death.

(2) Eligible Applicants.

(a) The following organizations are eligible to apply to administer the HBA Program:

(i) Units of Local Government;

(ii) Nonprofit Organizations;

(iii) Public Housing Authorities ("PHAs");

(iv) For-Profit Organizations; and

(v) Any other entity authorized by the Department's Executive Director.

(b) Organizations interested in applying to administer the HBA Program must complete the Homebuyer Assistance Program Certification Application.

(c) Organizations that are currently approved to participate in the Department's Texas First Time Homebuyer Program and the Texas Bootstrap Loan Program must complete only page one of the Homebuyer Assistance Program Certification Application and must execute a Loan Origination Agreement.

(d) The Homebuyer Assistance Program Certification Application may be downloaded from the Department's web-site located at <http://www.tdhca.state.tx.us/htf/nofa.htm>.

(3) HBA Program Requirements.

(a) The HBA Program provides eligible Borrowers with down payment, gap financing, and closing costs assistance for the acquisition of a Single Family Home that must be used as a principal residence.

(b) Eligible property types are Single Family Homes.

(c) Eligible Borrowers must be First-Time Homebuyers or Veterans.

(d) Borrower's income may not exceed 80 percent of the Area Median Family Income (AMFI). For properties located in those counties where the AMFI is lower than the state median income, Administrators may use the state median income, adjusted for Household size, as defined by HUD, to determine income eligibility.

(e) For income purposes, the income of a non-purchasing spouse must be taken into account when determining if the Borrower's income does not exceed 80 percent of the AMFI or state median income.

(f) Borrower(s) may not have liquid assets in excess of \$15,000 (excluding retirement and/or 401K accounts).

(4) Mortgage Loan.

(a) The home must be secured by a Mortgage as defined in the HTF Rules.

(b) The HBA Program lien may only be 2nd or 3rd lien position.

(c) Senior Liens must meet the following Loan requirements, which shall be verified by an executed Loan Underwriting and Transmittal Summary (such as Fannie Mae form 1008) or equivalent document(s) approved by the Department as defined in the HTF Rule:

(i) The Senior Lien loan must be a fully amortized, fixed-rate loan and cannot be an adjustable rate Mortgage ("ARM") or Subprime Mortgage Loan.

(ii) The following types of loans may be used in conjunction with the program:

(I) FHA;

(II) VA;

(III) USDA/RD/RHS;

(IV) Fannie Mae Conventional; or

(V) Freddie Mac Conventional.

(iii) Uninsured loans may be used with the HBA Program subject to the Department's approval.

(iv) Fee/Points Administrator may charge borrower. Unless the Senior Liens(s) are insured or guaranteed by USDA, FHA, VA, Fannie Mae or Freddie Mac, the following fee limits apply:

(I) Origination Fee: 1 percent;

(II) Buyer Points: 1 percent;

(III) Title Policy (if paid by Borrower): 1 percent;

(IV) Application Fee: May not exceed \$325 (includes compliance and funding fees);

(V) Other Closing Costs: Must be fully disclosed on HUD-1 and may not exceed 1.5 percent of loan amount.

(d) Maximum Debt Ratio. The total debt-to-income ratio may not exceed 45 percent, unless the Senior Lien(s) are insured or guaranteed by USDA, FHA, VA, Fannie Mae or Freddie Mac.

(e) Home value limits. The total contracted purchase price of the housing unit must not exceed the Single Family Mortgage Limits under §203(b) of the National Housing Act and the Loan-to-Value ("LTV") ratio may not be equal to or greater than 100 percent.

(f) The Department reserves the right to deny assistance in the event that the Senior Lien conditions are not to the satisfaction of the Department, as outlined in this NOFA and the HTF Rules.

(5) Department Lien and Loan Requirements.

(a) A Borrower will receive a zero percent interest loan up to \$10,000 for down payment, gap financing and/or closing costs for the purchase of a principal residence.

(b) The loan is repayable and may be amortized over a period between five (5) and ten (10) years, as selected by the Borrower. The first pay-

ment will be due no later than on the sixty-first (61) month after the first payment date of the Senior Lien loan.

(c) If, any time prior to the end of the loan term, the Borrower sells the property, or no longer occupies the property as their principal residence, the remaining loan balance shall become immediately due and payable.

(6) Reservation System Guidelines.

(a) In accordance to the HTF Rules and Compliance Administration Rule, an Applicant is ineligible to access the HBA Program until any past due audit has been submitted to the Department in a satisfactory format with no unresolved findings. Not applicable if currently participating in the Department's First-Time Homebuyer Bond Program.

(b) Administrators of active HBA Program Contracts may apply to access the Reservation System, but a setup will not be approved and no funds will be reserved until 100 percent of the funding for their previous HBA Program Contract is committed and all performance benchmarks are being met.

(c) HBA Program Implementation. Administrators will market the HBA Program, complete application intake, and qualify Borrowers for participation in the HBA Program. Once all required documents are completed and the eligible Borrowers execute a sales contract and is approved for a mortgage loan, the Administrator may reserve Project Costs for the Borrower in the Reservation System.

(d) Funds Availability. HBA Program funds are available on first-come, first-serve basis. Submission of a Setup on behalf of a Borrower does not guarantee funding.

(7) De-authorization.

In accordance to the HTF Rules the Department, may de-authorize access to Reservation System and the Loan Origination Agreement will be terminated if the requirements in this NOFA are not met. For the purposes of this NOFA, de-authorization is treated as a funding deobligation as outlined in the HTF Rules.

(8) Reserving Funds (Setups).

(a) After a purchase contract has been executed, the Administrator may submit a Setup in order to reserve funds for the Borrower in the Department's Reservation System. All documents listed on the set-up checklist must be submitted for review and approval prior to closing of the Senior Lien.

(b) Within **ten (10) business days** of the Setup into the Department's Reservation System the Administrator must submit to the Department all documents listed on the setup checklist via regular mail or email. Department staff will review the submitted documentation within **ten (10) business days** of receipt in accordance with the HTF Rules and NOFA.

(i) If the Setup is approved by the Department, it becomes a Reservation and is valid for **one-hundred-twenty (120) days** and the Administrator must ensure that all mortgage loans are closed during this **one-hundred-twenty (120) day period**.

(ii) A Setup that has not been approved by the Department and is incomplete or has not been corrected by the Administrator will not become a Reservation. The Administrator must resubmit the Setup documents with corrections completed if funds are available.

(c) Maximum Pending Setups. At any one time, the Administrator may have up to ten (10) unapproved Setups awaiting approval ("pending") in the Reservation System. If the Administrator has the maximum ten (10) Setups pending, new Setups will only be reviewed by the Department once an existing unapproved Setup becomes a Reservation (if approved) or is cancelled.

(d) Extensions. The Department may grant one-time extension of **thirty (30) days** to any Reservation due to extenuating circumstances that were beyond the Administrator's control upon receipt and approval of a written request. If the Administrator cannot close the loan within the **thirty (30) day** extension, the Reservation may be cancelled. The Administrator may submit another Setup if funding is available.

(9) Reservation Modification.

After a Reservation has been approved the Administrator will not be permitted to change, exchange, replace or switch Borrower applicants.

(10) Funding Requests.

Funds may be reimbursed to the Administrator for eligible Project Costs and Administrative Fees that occur within the Contract period.

(a) Project Costs Funding Requests. The Administrator must submit a Funding Request after a Reservation is approved and all mortgage loans have closed. A Funding Request may be submitted to the Department via regular mail or email and must be submitted along with all documents required by the Department.

(b) Administrative Fee requests. After an eligible Borrower closes the mortgage loan, the Administrator must submit a Funding Request for the Administrative Fee.

(c) Upon submission of the Funding Request to the Department via regular mail or email, the Department will review the submitted documentation within **ten (10) business days** in accordance with this NOFA and HTF Rules.

(d) If a Funding Request is in "disapproved" status for more than **thirty (30) days** in the Reservation System without further correction(s) from the Administrator, the Department will delete the reservation from the Reservation System.

(11) Housing Standards and Requirements.

(a) If, the Senior Lien(s) are insured or guaranteed by USDA, FHA, VA, Fannie Mae or Freddie Mac, no inspection is required.

(b) Uninsured loans utilizing HBA Program funds must be inspected and meet the following requirements:

(i) New Construction: If the property being purchased is a new construction and located within an incorporated area where certain building codes must be met, the Department will require a copy of the certificate of occupancy. If no certificate of occupancy is available from an incorporated area the Administrator must obtain a document from the local government entity indicating that the home has passed all required building codes. A copy of the certificate of occupancy or any other document received from the local governing entity must be submitted to the Department for approval upon completion of construction. All new construction properties located outside an incorporated area must be inspected by a third party professional inspector licensed by the Texas Real Estate Commission ("TREC").

(ii) Existing Homes: If the property being purchased is located inside or outside an incorporated area; inspections of the property will be required to be completed by a third party professional inspector licensed by the TREC.

(c) All final inspections must ensure the house is complete and safe. In both instances any deficiencies noted on the certificate of occupancy or the third party inspector's report must be corrected prior to closing unless approved by the Department.

(d) The Administrator, Seller and/or the Borrower will be responsible for the selection and/or the fee of a licensed TREC inspector.

(12) Questions regarding this NOFA should be addressed to:

Texas Department of Housing and Community Affairs

Housing Trust Fund Division

ATTN: Raul Gonzales

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 475-1473

E-mail: raul.gonzales@tdhca.state.tx.us

TRD-201101048

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 15, 2011

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Texas Department of Insurance

Company Licensing

Application to change the name of ADVANTA LIFE INSURANCE COMPANY to UNITED PROSPERITY LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Phoenix, Arizona.

Application to change the name of AMERICAN FIRE AND CASUALTY COMPANY to LIBERTY PREMIER INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Fairfield, Ohio.

Application to change the name of AMERICAN FIRE AND CASUALTY COMPANY to LIBERTY UNIVERSAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Fairfield, Ohio.

Application to change the name of THE OHIO CASUALTY INSURANCE COMPANY to LIBERTY COMMERCIAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Fairfield, Ohio.

Application to change the name of THE OHIO CASUALTY INSURANCE COMPANY to LIBERTY PROTECTION INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Fairfield, Ohio.

Application to change the name of THE OHIO CASUALTY INSURANCE COMPANY to LIBERTY SHIELD INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Fairfield, Ohio.

Application to change the name of OHIO SECURITY INSURANCE COMPANY to LIBERTY ADVANTAGE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Fairfield, Ohio.

Application to change the name of OHIO SECURITY INSURANCE COMPANY to LIBERTY SELECT INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Fairfield, Ohio.

Application for incorporation in the State of Texas by PATRIOT HEALTH INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Cedar Park, Texas.

Application to change the name of WEST AMERICAN INSURANCE COMPANY to LIBERTY CHOICE INSURANCE COMPANY, a for-

eign fire and/or casualty company. The home office is in Indianapolis, Indiana.

Application to change the name of WEST AMERICAN INSURANCE COMPANY to LIBERTY UNITED INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Indianapolis, Indiana.

Application for admission to the State of Texas by WESTERN NATIONAL MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Edina, Minnesota.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201101083

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 16, 2011



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of OPTUMHEALTH FINANCIAL SERVICES, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application of BUTLER BENEFIT SERVICE, INC., a foreign third party administrator. The home office is DAVENPORT, IOWA.

Application of MANAGEMENT AND NETWORK SERVICES, LLC, a foreign third party administrator. The home office is DUBLIN, OHIO.

Application of FIRST PUBLIC, LLC (DOING BUSINESS AS FIRST PUBLIC), a domestic third party administrator. The home office is AUSTIN, TEXAS.

Application of RESTAT, LLC, a foreign third party administrator. The home office is MILWAUKEE, WISCONSIN.

Application of GROUP BENEFIT SERVICES, INC., a foreign third party administrator. The home office is HUNT VALLEY, MARYLAND.

Application of PROFESSIONAL RISK AND ASSET MANAGEMENT INSURANCE SERVICES, INC. (DOING BUSINESS AS PRAM INSURANCE SERVICES), a foreign third party administrator. The home office is BREA, CALIFORNIA.

Application of MASSACHUSETTS BENEFIT ADMINISTRATORS, LLC (DOING BUSINESS AS BLUE BENEFIT ADMINISTRATORS OF MASSACHUSETTS), a foreign third party administrator. The home office is BOSTON, MASSACHUSETTS.

Application of PRESTWICK SERVICES, LLC, a foreign third party administrator. The home office is SUDBURY, MASSACHUSETTS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-201101084

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 16, 2011



Texas Department of Licensing and Regulation

Vacancies on Elevator Advisory Board

The Texas Department of Licensing and Regulation (Department) announces five vacancies on the Elevator Advisory Board (Board) established by Texas Health and Safety Code, Chapter 754. The pertinent rules may be found in 16 TAC §74.65. The purpose of the Elevator Advisory Board is to advise the Texas Commission of Licensing and Regulation (Commission) on the adoption of appropriate standards for the installation, alteration, operation and inspection of equipment; the status of equipment used by the public in this state; sources of information relating to equipment safety; public awareness programs related to elevator safety, including programs for sellers and buyers of single-family dwellings with elevators, chairlifts, or platform lifts; and any other matter considered relevant by the Commission.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of a representative of the insurance industry or a certified elevator inspector; a representative of equipment constructors; a representative of owners or managers of a building having fewer than six stories and having equipment; a representative of owners or managers of a building having six stories or more and having equipment; a representative of independent equipment maintenance companies; a representative of equipment manufacturers; a licensed or registered engineer or architect; a public member; and a public member with a physical disability. Members serve at the will of the Commission. This announcement is for the following positions: a representative of equipment constructors; a representative of owners or managers of a building having fewer than six stories and having equipment; a licensed or registered engineer or architect; a public member; and a public member with a physical disability.

Interested persons may download an application from the Texas Department of Licensing and Regulation at: www.license.state.tx.us. Applications may also be requested by telephone (800) 803-9202, fax (512) 475-2874 or email advisory.boards@license.state.tx.us. Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201101094

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: March 16, 2011



Vacancies on Licensed Court Interpreter Advisory Board

The Texas Department of Licensing and Regulation (Department) announces four vacancies on the Licensed Court Interpreter Advisory Board (Board) established by Texas Government Code, Chapter 57. The purpose of the Licensed Court Interpreter Advisory Board is to advise the Texas Commission of Licensing and Regulation (Commission) in adopting rules and designing a licensing examination.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of an active district, county, or statutory county court judge who has been a judge for at least the three years preceding the date

of appointment; an active court administrator who has been a court administrator for at least the three years preceding the date of appointment; an active attorney who has been a practicing member of the state bar for at least the three years preceding the date of appointment; three active licensed court interpreters; and three public members who are residents of this state. Members serve staggered six-year terms with the terms of one-third of the members expiring on February 1, or each odd-numbered year. This announcement is for the following positions: district, county, or statutory county court judge; court administrator; an attorney; and a public member.

Interested persons may download an application from the Texas Department of Licensing and Regulation at: www.license.state.tx.us. Applications may also be requested by telephone (800) 803-9202, fax (512) 475-2874 or email advisory.boards@license.state.tx.us.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201101093

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: March 16, 2011



Texas Lottery Commission

Instant Game Number 1317 "Yellow Rose of Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1317 is "YELLOW ROSE OF TEXAS". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1317 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1317.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 or \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1317 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
ROSE SYMBOL	ROSE
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100.00	ONE HUND
\$1,000	ONE THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000, or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1317), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1317-0000001-001.

K. Pack - A pack of "YELLOW ROSE OF TEXAS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fan-folded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "YELLOW ROSE OF TEXAS" Instant Game No. 1317 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "YELLOW ROSE OF TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE for that number. If a player reveals a "rose" play symbol, the player wins the PRIZE for that symbol instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork

on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No three or more duplicate non-winning prize symbols will appear on a ticket.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. No prize amount in a non-winning spot will correspond with the play symbol (i.e. 5 and \$5).

G. The "ROSE" (auto win) play symbol will never appear more than once on a ticket.

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "YELLOW ROSE OF TEXAS" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "YELLOW ROSE OF TEXAS" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "YELLOW ROSE OF TEXAS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "YELLOW ROSE OF TEXAS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "YELLOW ROSE OF TEXAS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1317. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1317 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	643,200	12.50
\$4	739,680	10.87
\$5	96,480	83.33
\$10	112,560	71.43
\$20	48,240	166.67
\$50	53,533	150.19
\$100	7,504	1,071.43
\$1,000	47	171,063.83
\$20,000	8	1,005,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.73. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1317 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1317, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101030
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: March 14, 2011



Instant Game Number 1319 "Blackjack"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1319 is "BLACKJACK". The play style is "beat score".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1319 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1319.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 4 CARD SYMBOL, 5 CARD SYMBOL, 6 CARD SYMBOL, 7 CARD SYMBOL, 8 CARD SYMBOL, 9 CARD SYMBOL, 10 CARD SYMBOL, J CARD SYMBOL, Q CARD SYMBOL, K CARD SYMBOL, A CARD SYMBOL, 16 CARD SYMBOL, 17 CARD SYMBOL, 18 CARD SYMBOL, 19 CARD SYMBOL, 20 CARD SYMBOL, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200 and \$2,100.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1319 - 1.2D

PLAY SYMBOL	CAPTION
4 CARD SYMBOL	FOR
5 CARD SYMBOL	FIV
6 CARD SYMBOL	SIX
7 CARD SYMBOL	SVN
8 CARD SYMBOL	EGT
9 CARD SYMBOL	NIN
10 CARD SYMBOL	TEN
J CARD SYMBOL	JCK
Q CARD SYMBOL	QUN
K CARD SYMBOL	KNG
A CARD SYMBOL	ACE
16 CARD SYMBOL	SXTN
17 CARD SYMBOL	SVTN
18 CARD SYMBOL	EGTN
19 CARD SYMBOL	NITN
20 CARD SYMBOL	TWTY
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$6.00	SIX\$
\$10.00	TEN\$
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$2,100	21 HUND

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$4.00, \$6.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100 or \$200.

H. High-Tier Prize - A prize of \$2,100.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1319), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1319-0000001-001.

K. Pack - A pack of "BLACKJACK" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BLACKJACK" Instant Game No. 1319 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BLACKJACK" Instant Game is determined once the latex on the ticket is scratched off to expose 13 (thirteen) Play Symbols. If the total of any of YOUR HANDS beats the DEALER'S TOTAL, the player wins PRIZE for that hand. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 13 (thirteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 13 (thirteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 13 (thirteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 13 (thirteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at

the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols will appear on a ticket.

C. Non-winning prize symbols will never be the same as the winning prize symbol(s).

D. No YOUR HAND will contain two aces.

E. No YOUR HAND will total less than 14.

F. No ties between a YOUR HAND total and the DEALER'S TOTAL.

G. The top prize symbol will appear on every ticket unless otherwise restricted.

H. No duplicate non-winning YOUR HANDS on a ticket in any order.

2.3 Procedure for Claiming Prizes.

A. To claim a "BLACKJACK" Instant Game prize of \$1.00, \$2.00, \$3.00, \$4.00, \$6.00, \$10.00, \$20.00, \$30.00, \$50.00 \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BLACKJACK" Instant Game prize of \$2,100, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying

a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BLACKJACK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BLACKJACK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BLACKJACK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,120,000 tickets in the Instant Game No. 1319. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1319 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	608,000	15.00
\$2	668,800	13.64
\$3	334,400	27.27
\$4	106,400	85.71
\$6	60,800	150.00
\$10	76,000	120.00
\$20	14,060	648.65
\$30	6,650	1,371.43
\$50	2,470	3,692.31
\$100	874	10,434.78
\$200	608	15,000.00
\$2,100	76	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.85. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1319 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1319, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101031
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: March 14, 2011



Instant Game Number 1326 "Diamond Dash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1326 is "DIAMOND DASH". The play style for this game is "key symbol match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1326 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1326.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: PIGGY BANK SYMBOL, VAULT SYMBOL, MONEY STACK SYMBOL, CLOVER SYMBOL, ARMORED CAR SYMBOL, SAFE SYMBOL, BAR SYMBOL, POT OF GOLD SYMBOL, RUBY SYMBOL, DOUBLE DOLLAR SIGN SYMBOL, CHEST SYMBOL, MONEY BAG SYMBOL, \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 or \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1326 - 1.2D

PLAY SYMBOL	CAPTION
PIGGY BANK SYMBOL	PIGGY
VAULT SYMBOL	VAULT
MONEY STACK SYMBOL	MNYSTAK
CLOVER SYMBOL	CLOVER
ARMORED CAR SYMBOL	ARM CAR
SAFE SYMBOL	SAFE
BAR SYMBOL	BAR
POT OF GOLD SYMBOL	GOLD
RUBY SYMBOL	RUBY
DOUBLE DOLLAR SIGN SYMBOL	DOUBLE
CHEST SYMBOL	CHEST
MONEY BAG SYMBOL	BAG
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1326), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1326-0000001-001.

K. Pack - A pack of "DIAMOND DASH" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government

Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DIAMOND DASH" Instant Game No. 1326 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "DIAMOND DASH" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. The player must scratch the play area. If a player reveals a "Money Stack" play symbol, the player wins the PRIZE for that symbol. If a player reveals a DOUBLE DOLLAR SIGN play symbol, the player wins DOUBLE the prize for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The ticket shall be intact;
 6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
 8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The ticket must not be counterfeit in whole or in part;
 10. The ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
 14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
 15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Players can win up to six (6) times on a ticket in accordance with the approved prize structure.
- B. Adjacent non-winning tickets within a pack will not have identical play or prize symbol patterns. Two (2) tickets have identical play or prize symbol patterns if they have the same play or prize symbols in the same positions.
- C. Non-winning tickets will never contain more than two (2) identical prize symbols.
- D. No ticket will contain identical non-winning play symbols.
- E. On winning tickets, non-winning prize symbols will never appear more than two (2) times.
- F. The top prize (\$1,000) will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "DIAMOND DASH" Instant Game prize of \$1.00, \$2.00, \$5.00 \$10.00, \$20.00, \$40.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DIAMOND DASH" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DIAMOND DASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp pro-

gram or the program of financial assistance under Chapter 31, Human Resources Code;

- 4. in default on a loan made under Chapter 52, Education Code; or
- 5. in default on a loan guaranteed under Chapter 57, Education Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "DIAMOND DASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "DIAMOND DASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,120,000 tickets in the Instant Game No. 1326. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1326 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,094,400	8.33
\$2	668,800	13.64
\$5	121,600	75.00
\$10	60,800	150.00
\$20	30,400	300.00
\$40	23,750	384.00
\$100	1,900	4,800.00
\$1,000	76	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1326 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1326, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101091
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 16, 2011



Notice of Texas Lottery Pick 3™ On-Line Game Green Ball™ Promotion

The Texas Lottery Commission announces the following limited time player promotion to be conducted in accordance with the *Pick 3* on-line game rule.

The Green Ball promotion is a limited time player promotion associated with the *Pick 3* on-line game and is conducted in accordance with the *Pick 3* game rules and other lottery rules applicable to the *Pick 3* game. The Green Ball promotion will offer *Pick 3* players a chance to increase

their *Pick 3* prize amounts won in a day or night *Pick 3* drawing during the promotion dates. This promotion applies to prizes for the *Pick 3* base game only and does not increase the prizes for the Sum It Up® add-on feature.

When a green ball is drawn, *Pick 3* prizes will be increased by approximately 20%. See prize chart included.

PICK 3 GREEN BALL PROMOTION DESCRIPTION

Promotion Dates: April 4 - April 30, 2011

The Green Ball promotion allows a player to increase their winning *Pick 3* prize amount by approximately 20%. The promotion does not increase the cost of the *Pick 3* play for the player.

From April 4 - April 30, 2011, there will be a total of forty-eight *Pick 3* drawings that will include an additional Green Ball drawing. At the start of this promotion, five (5) white balls and one (1) green ball will be placed in a drawing machine and one ball will be randomly selected after each *Pick 3* day and each *Pick 3* night drawing. If the green ball is selected, winning players will have approximately 20% added to their regular *Pick 3* prize amount. Every time a white ball is selected, the white ball is removed from the drawing machine. This increases the chances of the green ball being selected in the next drawing. Once the green ball is selected, all five white balls and one green ball are loaded back into the drawing machine for the next drawing. The odds of selecting the green ball range from 1:1 to 1:6 and depend on the total number of white balls in the drawing machine for a given drawing.

The *Pick 3* drawings and the Green Ball drawings will be available for viewing on the Texas Lottery website at www.txlottery.org.

Pick 3™ Green Ball™ Prize Chart

ODDS OF WINNING AND PRIZE AMOUNTS

(Note: Number combinations shown are for example only)

IF YOU PLAY	FOR	AND NUMBERS DRAWN ARE	PICK 3 PRIZE	GREEN BALL PRIZE	TOTAL
EXACT ORDER: Odds 1:1,000 516	\$.50 \$1.00	516	\$250 \$500	\$49 \$98	\$299 \$598
ANY ORDER: 2 like numbers Odds 1:333 665	\$.50 \$1.00	665, 566, 656	\$80 \$160	\$16 \$32	\$96 \$192
ANY ORDER: 3 different numbers Odds 1:167 516	\$.50 \$1.00	615, 651, 516 561, 165, 156	\$40 \$80	\$8 \$16	\$48 \$96
EXACT/ANY ORDER: 2 like numbers Odds 1:333 797	\$.50 Exact Order \$.50 Any Order \$1.00	797 Exact Order 797, 977, 779 Any Order	\$250 + 80 = \$330 Pays both Exact Order & Any Order when 797 is drawn \$80	\$66 \$16	\$396 \$96
EXACT/ANY ORDER: 3 different numbers Odds 1:167 654	\$.50 Exact Order \$.50 Any Order \$1.00	654 Exact Order 645, 654, 465 456, 564, 546 Any Order	\$250 + 40 = \$290 Pays both Exact Order & Any Order when 654 is drawn \$40	\$58 \$8	\$348 \$48
COMBO: 2 like numbers Odds 1:333 242	\$.50 + \$.50 + \$.50 = \$1.50 \$1 + \$1 + \$1 = \$3.00 You're playing Exact Order 3 times for either \$.50 or \$1.00	242, 422, 224	\$1.50 play wins \$250 \$3.00 play wins \$500	\$49 \$98	\$299 \$598
COMBO: 3 different numbers Odds 1:167 358	\$.50 + \$.50 + \$.50 + \$.50 + \$.50 = \$3.00 \$1 + \$1 + \$1 + \$1 + \$1 = \$6.00 You're playing Exact Order 6 times for either \$.50 or \$1.00	358, 385, 538 583, 835, 853	\$3.00 play wins \$250 \$6.00 play wins \$500	\$49 \$98	\$299 \$598

Pick 3 odds are 1:167-1:1,000. The Green Ball promotion applies to prizes for the Pick 3 base game only and does not increase prizes for the Sure It Up™ add-on feature. The odds of selecting the green ball range from 1:1 to 1:6 and depend on the total number of white balls in the drawing machine for a given drawing. The Texas Lottery reserves the right to discontinue this promotion at any time. Must be 18 years of age or older to purchase a Texas Lottery ticket. Copyright © 2010 Texas Lottery Commission. All rights reserved. The Texas Lottery supports Texas education. PLAY RESPONSIBLY.

TRD-201101051
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 15, 2011

North Central Texas Council of Governments

Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The City of Garland and the North Central Texas Council of Governments (NCTCOG) are seeking consultants to prepare a sustainable Transit Oriented Redevelopment Plan, including the identification of high-potential catalyst projects and accomplishment of specific due diligence tasks within the general vicinity of Garland's Forest Jupiter DART Rail Station. The Transit Oriented Redevelopment Plan will address land use, urban form and design, infrastructure, access and circulation, sustainability and housing from the perspective of two geographic levels. The Transit Oriented Redevelopment Plan process will foster the collaboration of public and private stakeholders in the transformation of the project location.

Due Date

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday, April 22, 2011, to Karla Weaver, AICP, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at <http://www.nctcog.org/trans/admin/rfp> by the close of business on Friday, March 25, 2011. NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertise-

ment, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201101079

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: March 16, 2011



Panhandle Regional Planning Commission

Request for Qualifications

The Panhandle Water Planning Group, a regional planning group formed pursuant to Senate Bill 1 (1997) and acting through the Panhandle Regional Planning Commission (PRPC), is seeking proposals to provide professional services to assist in the development of the next regional water plan or revision of the existing Regional Water Plan for the Panhandle Water Planning Area (Region A). The successful firm(s) will demonstrate knowledge of large-scale water planning in general, the specific requirements of water planning under the direction of Senate Bill 1 (1997) (including proposed rules changes to Sections 355, 357), and the impact of Senate Bill 2 (2001) on Regional Water Planning Activities. Firm(s) with experience in the general geographic area and conditions of the Panhandle Water Planning Area are preferred. It is the intent of the Panhandle Water Planning Group to select a firm or combination of firms capable of developing the fourth iteration of the Region A Water Plan and serving as the 'prime' consultant(s) for developing the Regional Water Plan.

I. Statement of Qualifications - The Panhandle Water Planning Group, through the PRPC, is seeking to contract with a competent firm(s) or individual(s), with the necessary credentials and qualifications, that has specific experience and knowledge in the field of large-scale water resource planning with expertise in both surface and groundwater issues and has specific demonstrated experience in the area of agricultural, municipal and industrial water use. Please provide with your statement of qualifications a list of past and current clients, and resumes of all staff who will or may be assigned to this project should you receive the contract award. In addition, please provide a list of proposed sub-consultants or team members who are or may be involved in your proposal.

II. Scope of Services

Regional Water Plan Development

1. Consultant will provide all required planning services in accordance with the developed Scope of Work for the Panhandle Regional Water Plan except those services that have been specifically exempted.
2. Consultant will provide the required coordination necessary in the development of the Regional Water Plan.
3. Consultant will integrate and coordinate any work performed by local entities into the Regional Water Plan.
4. Consultant will integrate into the Regional Water Plan work being performed under separate contracts and will ensure that any work being performed under separate contracts will satisfy the needs of the Regional Water Plan.
5. Consultant will provide, at a minimum, monthly reporting to the Panhandle Water Planning Group on the progress of the regional water planning effort.

6. Consultant will develop a draft Regional Water Plan and present the same to the Panhandle Water Planning Group.

7. Consultant will assist with the adoption of the Panhandle Regional Water Plan.

8. Consultant will ensure the Regional Water Plan meets the requirements of the Senate Bill 1 (1997), Senate Bill 2 (2001), and Chapter 357 of 31 TAC.

9. Consultant will attend advisory meetings as necessary regarding tasks being performed separate from the Consultant's contract.

III. Submission

1. Proposals will only be accepted from firms or individuals having requested an RFQ Package

a. RFQ packages are available by written request from the Panhandle Regional Planning Commission, P.O. Box 9257, Amarillo, TX 79105. Telephone (806) 372-3381, email: kingham@theprpc.org. Faxed or emailed requests will be accepted. All inquiries and requests must be directed to the attention of Kyle G. Ingham.

2. Deadline for Submission - **April 12, 2011 at 5:00 p.m.** Please submit twelve (12) hard copies and one (1) electronic copy of the proposal and statement of qualifications to:

Panhandle Regional Planning Commission

Attn: Kyle G. Ingham

P.O. Box 9257

Amarillo, TX 79105

Physical Address: 415 West Eighth Avenue, Amarillo, Texas 79101

Proposals received after the stated deadline will not be considered.

IV. Proposal Format - Twelve (12) hard copies and one (1) electronic copy of the proposals, which shall include eleven (11) bound copies and one (1) un-bound copy must be received. Please limit all proposals to thirty (30) pages, including all appendices. All resumes should be contained in the appendices. All proposals must clearly respond to Items I and II as well as provide a proposed work and responsibility schedule that clearly defines the elements of work to be undertaken in the development of the Regional Water Plan.

V. Please ensure that all submitted proposals are in the requested format and satisfy the terms of Items I - IV. Proposals not meeting the stated requirements may be considered informal and non-responsive.

The Panhandle Water Planning Group reserves the right to negotiate with any and all individuals and firms that submit proposals and to award more than one contract or to award no contracts. All potential contracts and tasks arising from this RFQ are subject to approval by the Texas Water Development Board and are contingent upon receiving funding from the Texas Water Development Board for the approved tasks.

TRD-201101088

Kyle Ingham

Local Government Services Director

Panhandle Regional Planning Commission

Filed: March 16, 2011



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 March 14, 2011, 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 RB3, LLC Reach Broadband for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39252.

The requested amendment is to expand the service area footprint to include the city limits of West and Mart, Texas and to reduce the service area footprint by removing Beckville, Gregg, Rusk and Tatum, 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 39252.

TRD-201101089
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 16, 2011



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 14, 2011, 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 for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39253.

The requested amendment is to expand the service area footprint to include the city limits of Pantego, 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 39253.

TRD-201101090
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 16, 2011



Notice of a Petition for Declaratory Relief

Notice is given to the public of a petition for declaratory relief filed with the Public Utility Commission of Texas (commission) on March 14, 2011.

Docket Style and Number: Petition of Texas Windstream, Inc. for Declaratory Relief, Docket Number 39255.

The Application: Texas Windstream, Inc. (Texas Windstream) filed a petition with the commission requesting a declaratory order terminat-

ing any requirement under the final order in Docket Number 11456 to make payments to the former High Cost Assistance Program (HCAP). Ordering Paragraph 5 of the Order in Docket Number 11456 ordered Texas Windstream (formerly Texas Alltel) to make a monthly payment to the HCAP established by P.U.C. Substantive Rule §23.53(d). This rule was repealed in February 1999, and the HCAP no longer exists. A new rule P.U.C. Substantive Rule §26.406 was adopted. Texas Windstream asserts that requiring it to pay the Docket Number 11456 payment, in addition to the statewide uniform Texas Universal Service Fund (TUSF) assessment, causes Texas Windstream to pay more than the statewide uniform charge, in violation of Public Utility Regulatory Act §56.022(a).

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All correspondence should refer to Docket Number 39255.

TRD-201101068
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 15, 2011



Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Brazos Telephone Cooperative, Inc. (BRAZOS) application filed with the Public Utility Commission of Texas (commission) on March 1, 2011, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Application of Brazos Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 39206.

The Application: Brazos filed an application to make revisions to its Local Exchange Tariff to implement a minor rate change to the Monthly Local Exchange Access Line Rates for residence and business customers. Brazos proposes an effective date of July 1, 2011. The estimated annual revenue increase recognized by Brazos is \$13,531.32 or 1.34% for the first year of Brazos' gross annual intrastate revenues. Brazos has 1156 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2011, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 31, 2011. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 39206.

TRD-201101025

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 11, 2011



Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Brazos Telecommunications, Inc. (BTI) application filed with the Public Utility Commission of Texas (commission) on March 1, 2011, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Application of Brazos Telecommunications, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 39207.

The Application: BTI filed an application to implement a minor rate change for revisions to its Local Exchange Tariff to implement a minor rate change to the 1-Party Monthly Local Exchange Access Line Rates for residence and the 1-Party/Key System Monthly Local Exchange Access Line Rates for business customers. BTI proposes an effective date of July 1, 2011. The estimated annual revenue increase recognized by BTI is \$71,708.64.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2011, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 31, 2011. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 39207.

TRD-201101024
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 11, 2011



Notice of a Petition for Commission Determination

Notice is given to the public of a petition for commission determination filed with the Public Utility Commission of Texas on March 8, 2011.

Docket Style and Number: Petition of LCRA Transmission Services Corporation for a Commission Determination that LCRA TSC may seek cost recovery in the future for certain CREZ related costs, Docket Number 39240.

The Application: LCRA Transmission Services Corporation (LCRA TSC) seeks a commission determination that LCRA TSC may preserve for a future rate proceeding the ability and opportunity to demonstrate that costs related to LCRA TSC's Gillespie to Newton CREZ Priority project were incurred in good faith, are reasonable and may be recovered in rates at some point in the future.

LCRA TSC incurred approximately \$6 million in costs associated with the Gillespie to Newton CREZ Priority project that are not assignable

to other projects. LCRA TSC stated that, in accordance with generally accepted accounting principles, these costs must be written off by June 30, 2011, the close of LCRA TSC fiscal year, unless the commission determines that LCRA TSC may be allowed to present these costs in a future rate proceeding at which time these costs may be reviewed for reasonableness. LCRA TSC requested an expedited procedural schedule to address the issues raised in the petition so that a commission order can be entered by June 30, 2011.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All correspondence should refer to Docket Number 39240.

TRD-201101023
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 11, 2011



Notice of Petition for Determination of Eligibility for Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on March 11, 2011, for determination of non-eligibility for Texas Universal Service Fund (TUSF) disbursements pursuant to Public Utility Regulatory Act, §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Petition of Commission Staff for Determination of Non-Eligibility for Texas Universal Service Fund Disbursements to Consolidated Communications of Fort Bend Company pursuant to Public Utility Regulatory Act, §56.025 and P.U.C. Substantive Rule §26.406 and Refund of Disbursements. Docket Number 39250.

The Application: The petition seeks a commission determination that Consolidated Communications of Fort Bend Company is no longer eligible to receive TUSF disbursements under PURA §56.025 and P.U.C. Substantive Rule §26.406, and to require Consolidated Communications of Fort Bend Company to refund the TUSF disbursements that it received in violation of those provisions.

Persons wishing to intervene or 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 (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 comments should reference Docket Number 39250.

TRD-201101066
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 15, 2011



Supreme Court of Texas

Amendments to Texas Rules of Civil Procedure 281 and 284 and to the Jury Instructions Under Texas Rule of Civil Procedure 226A

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11-9047

AMENDMENTS TO TEXAS RULES OF CIVIL PROCEDURE 281 AND 284 AND TO THE JURY INSTRUCTIONS UNDER TEXAS RULE OF CIVIL PROCEDURE 226A

ORDERED that:

1. Pursuant to Section 22.004 of the Texas Government Code, the Supreme Court of Texas amends Texas Rules of Civil Procedure 281 and 284, as follows.
2. The Supreme Court of Texas also amends the jury instructions that are prescribed by Order of this Court under Texas Rule of Civil Procedure 226a, as follows.
3. By Order dated December 13, 2010, in Misc. Docket No. 10-9210, the Court proposed amendments to Rules 281 and 284 and to the Rule 226a jury instructions and invited public comment. Following public comment, the Court made additional revisions to the rules and jury instructions. This Order contains the final version of the amended rules and jury instructions that take effect April 1, 2011.
4. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of the Order for publication in the *Texas Register*.

Dated: March 14, 2011.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Dale Wainwright, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Rule 281. Papers Taken to Jury Room

With the court's permission, the jury may take with them to the jury room any notes they took during the trial. In addition, the jury may, and on request shall, take with them in their retirement the charges and

instructions, general or special, which were given and read to them, and any written evidence, except the depositions of witnesses, but shall not take with them any special charges which have been refused. Where only part ~~only~~ of a paper has been read in evidence, the jury shall not take the same with them, unless the part so read to them is detached from that which was excluded.

* * * *

Rule 284. Judge to Caution Jury

Immediately after jurors are selected for a case, the court must instruct them to turn off their phones and other electronic devices and not to communicate with anyone through any electronic device while they are in the courtroom or while they are deliberating. The court must also instruct them that, while they are serving as jurors, they must not post any information about the case on the Internet or search for any information outside of the courtroom, including on the Internet, to try to learn more about the case.

If jurors are permitted to separate before they are released from jury duty, either during the trial or after the case is submitted to them, the jury shall be admonished by the court must instruct them that it is their duty not to communicate ~~converse~~ with, or permit themselves to be addressed by, any other person; ~~on~~ about any subject ~~connected with~~ relating to the ~~trial~~ case.

* * * *

Jury Instructions Prescribed by Order Under Rule 226a

[proposed amendments are not redlined; brackets indicate optional and instructive text]

I.

That the following oral instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the members of the jury panel after they have been sworn in as provided in Rule 226 and before the voir dire examination:

Members of the Jury Panel [or Ladies and Gentlemen of the Jury Panel]:

Thank you for being here. We are here to select a jury. Twelve [six] of you will be chosen for the jury. Even if you are not chosen for the jury, you are performing a valuable service that is your right and duty as a citizen of a free country.

Before we begin: Turn off all phones and other electronic devices. While you are in the courtroom, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [I will give you a number where others may contact you in case of an emergency.] Do not record or photograph any part of these court proceedings, because it is prohibited by law.

If you are chosen for the jury, your role as jurors will be to decide the disputed facts in this case. My role will be to ensure that this case is tried in accordance with the rules of law.

Here is some background about this case. This is a civil case. It is a lawsuit that is not a criminal case. The parties are as follows: The plaintiff is _____, and the defendant is _____. Representing the plaintiff is _____, and representing the defendant is _____. They will ask you some questions during jury selection. But before their questions begin, I must give you some instructions for jury selection.

Every juror must obey these instructions. You may be called into court to testify about any violations of these instructions. If you do not fol-

low these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.

These are the instructions.

1. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like "hello" and "good morning." Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.
2. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.
3. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.
4. The parties, through their attorneys, have the right to ask you questions about your background, experiences, and attitudes. They are not trying to meddle in your affairs. They are just being thorough and trying to choose fair jurors who do not have any bias or prejudice in this particular case.
5. Remember that you took an oath that you will tell the truth, so be truthful when the lawyers ask you questions, and always give complete answers. If you do not answer a question that applies to you, that violates your oath. Sometimes a lawyer will ask a question of the whole panel instead of just one person. If the question applies to you, raise your hand and keep it raised until you are called on.

Do you understand these instructions? If you do not, please tell me now.

The lawyers will now begin to ask their questions.

II.

That the following oral and written instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the jury immediately after the jurors are selected for the case:

Members of the Jury [or Ladies and Gentlemen]:

You have been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

[Hand out the written instructions.]

You have each received a set of written instructions. I am going to read them with you now. Some of them you have heard before and some are new.

1. Turn off all phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on the Internet before these court proceedings end and you are released from jury duty. Do

not record or photograph any part of these court proceedings, because it is prohibited by law.

2. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like "hello" and "good morning." Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.
3. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.
4. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.
5. Do not discuss this case with anyone during the trial, not even with the other jurors, until the end of the trial. You should not discuss the case with your fellow jurors until the end of the trial so that you do not form opinions about the case before you have heard everything.

After you have heard all the evidence, received all of my instructions, and heard all of the lawyers' arguments, you will then go to the jury room to discuss the case with the other jurors and reach a verdict.

6. Do not investigate this case on your own. For example, do not:
 - a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;
 - b. go to places mentioned in the case to inspect the places;
 - c. inspect items mentioned in this case unless they are presented as evidence in court;
 - d. look anything up in a law book, dictionary, or public record to try to learn more about the case;
 - e. look anything up on the Internet to try to learn more about the case; or
 - f. let anyone else do any of these things for you.

This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial.

7. Do not tell other jurors about your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another similar case. Do not tell the other jurors about it. Telling other jurors about it is wrong because it means the jury will be considering things that were not admitted in court.

8. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.

9. Do not consider or guess whether any party is covered by insurance unless I tell you to.

10. During the trial, if taking notes will help focus your attention on the evidence, you may take notes using the materials the court has provided. Do not use any personal electronic devices to take notes. If taking notes will distract your attention from the evidence, you should not take notes. Your notes are for your own personal use. They are not evidence. Do not show or read your notes to anyone, including other jurors.

You must leave your notes in the jury room or with the bailiff. The bailiff is instructed not to read your notes and to give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone.

[You may take your notes back into the jury room and consult them during deliberations. But keep in mind that your notes are not evidence. When you deliberate, each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. After you complete your deliberations, the bailiff will collect your notes.]

When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

11. I will decide matters of law in this case. It is your duty to listen to and consider the evidence and to determine fact issues that I may submit to you at the end of the trial. After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked and you should not consider which side will win. Instead, you will need to answer the specific questions I give you.

Every juror must obey my instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I may have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.

Do you understand these instructions? If you do not, please tell me now.

Please keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.

III.

Court's Charge

Before closing arguments begin, the court must give to each member of the jury a copy of the charge, which must include the following written instructions, with such modifications as the circumstances of the particular case may require:

Members of the Jury [or Ladies & Gentlemen of the Jury]:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

[I will give you a number where others may contact you in case of an emergency.]

[Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.]

[You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.]

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence [unless you are told otherwise]. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence [unless you are told otherwise].

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. [Unless otherwise instructed] The answers to the questions must be based on the decision of at least 10 of the 12 [5 of the 6] jurors. The same 10 [5] jurors must agree on every answer. Do not agree to be

bound by a vote of anything less than 10 [5] jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

[Definitions, questions, and special instructions given to the jury will be transcribed here.]

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. [Unless otherwise instructed] You may answer the questions on a vote of 10 [5] jurors. The same 10 [5] jurors must agree on every answer in the charge. This means you may not have one group of 10 [5] jurors agree on one answer and a different group of 10 [5] jurors agree on another answer.
2. If 10 [5] jurors agree on every answer, those 10 [5] jurors sign the verdict.
If 11 jurors agree on every answer, those 11 jurors sign the verdict.
If all 12 [6] of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all 12 [6] of you agreeing on some answers, while only 10 [5] or 11 of you agree on other answers. But when you sign the verdict, only those 10 [5] who agree on every answer will sign the verdict.
4. [Added if the charge requires some unanimity] There are some special instructions before Questions _____ explaining how to answer those questions. Please follow the instructions. If all 12 [6] of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

Judge Presiding

Verdict Certificate

Check one:

____ Our verdict is unanimous. All 12 [6] of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 [6] of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

____ Our verdict is not unanimous. Ten [Five] of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE / NAME PRINTED

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____

If you have answered Question No. ____ [the exemplary damages amount], then you must sign this certificate also.

Additional Certificate

[Used when some questions require unanimous answers]

I certify that the jury was unanimous in answering the following questions. All 12 [6] of us agreed to each of the answers. The presiding juror has signed the certificate for all 12 [6] of us.

[Judge to list questions that require a unanimous answer, including the predicate liability question.]

Signature of Presiding Juror

Printed Name of Presiding Juror

IV.

That the following oral instructions shall be given by the court to the jury after the verdict has been accepted by the court and before the jurors are released from jury duty:

Thank you for your verdict.

I have told you that the only time you may discuss the case is with the other jurors in the jury room. I now release you from jury duty. Now you may discuss the case with anyone. But you may also choose not to discuss the case; that is your right.

After you are released from jury duty, the lawyers and others may ask you questions to see if the jury followed the instructions, and they may ask you to give a sworn statement. You are free to discuss the case with

them and to give a sworn statement. But you may choose not to discuss the case and not to give a sworn statement; that is your right.

TRD-201101065
Kennon Peterson
Rules Attorney
Supreme Court of Texas
Filed: March 15, 2011

Texas Department of Transportation

Request for Proposals - Toll Operations and Customer Service Center Operators

The Texas Department of Transportation (department) issues this Request for Proposals (RFP) to procure services from a prime vendor with high quality systems to support the operation of the customer service center (CSC) and toll plazas for current and future toll facilities in Texas. Pursuant to Transportation Code, §228.052, the department may enter into an agreement with one or more persons to provide personnel, equipment, systems, facilities, and services necessary to operate a toll project or system, including the operation of toll plazas and lanes and customer service centers and the collection of tolls. The Texas Transportation Commission has promulgated rules located at 43 Texas Administrative Code §27.83 governing the requirements for soliciting proposals to operate a department toll project or system.

Purpose: The department is seeking proposals from qualified vendors interested in providing CSC services supporting present and future toll projects throughout the state and toll operations services for the Central Texas Turnpike System. The department seeks a vendor to provide the staff, systems, and supplies required to establish, operate, and maintain the TxTag statewide CSC operation in accordance with the department's business rules and the requirements of the scope of work, and to manage and maintain existing toll plaza operations and facilities.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Ms. Kathy Garrett, Texas Department of Transportation, Turnpike Authority Division, 4616 Howard Lane Suite 850, Austin, Texas 78728; telephone: (512) 874-9723; email: Kathy.Garrett@txdot.gov. The RFP is also available on the following website: http://www.txdot.gov/business/projects/toll_ops.htm.

Site Tour of Existing Facilities: Each prime vendor will be allowed to tour the existing facilities. A maximum of two (2) representatives from an interested vendor may participate in a site tour on one of the following dates: April 4, 2011 8:00 a.m. - 12:00 p.m.; April 4, 2011 1:00 p.m. - 5:00 p.m.; or April 6, 2011 1:00 p.m. - 5:00 p.m. In order to request a site tour, each vendor should submit an email indicating a first and second choice date and time to Kathy.Garrett@txdot.gov. Ms. Garrett will schedule tours in the order requests are received. Participation in a site tour is optional and is not a prerequisite to responding to the RFP.

Proposal Submission Deadline: Friday, May 27, 2011 at 3:00 p.m.

Additional Information: The department has operated toll roads in Texas since 2006. Additional information regarding facility background and descriptions can be researched at <http://www.texas-tollways.com>.

TRD-201101085
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 16, 2011

Updated Request for Proposal - Private Consultant Services

In the March 11, 2011, issue of the *Texas Register* (36 TexReg 1766), the Texas Department of Transportation (department) issued a Request for Proposal - Private Consultant Services notifying the public that it was seeking an outside professional change management firm for the development of a comprehensive, enterprise-wide strategy and plan. That Request for Proposal - Private Consultant Services is cancelled and this new Request for Proposal - Private Consultant Services is issued with a new proposal submission deadline date.

Request for Proposal - Private Consultant Services: The department announces a Request for Proposal (RFP) for private consultant services pursuant to Government Code, Chapter 2254, Subchapter B. The term of the contract will be from project initiation to May 31, 2012. The department will administer the contract. The RFP will be released on March 25, 2011, and is contingent on the finding of necessity from the Governor's Office.

Purpose: Texas Department of Transportation is seeking an outside professional change management firm for the development of a comprehensive, enterprise-wide implementation strategy and plan, as well as for the actual oversight of the implementation. The effort will involve review of the TxDOT Restructure Council Report, as well as the Grant Thornton Report and recommendations relative to the management and organizational structure of administration, divisions, districts, and offices of the department. Based on the recommendations of TxDOT Restructure Council and Grant Thornton, the Consultant shall provide the planning, design, implementation and management of this comprehensive, enterprise-wide strategic plan. The strategic plan should include critical path recommendations for organizational modernization and performance improvement throughout the department, which includes, Leadership and Culture; Implementing Change; Organizational Structure; Financial Management; Informational Technology; Human Resources; Communications; Plan, Design, Build; and Procurement.

Eligible Applicants: Eligible applicants include, but are not limited to, organizations that provide private consulting services.

Program Goal: The completion of a comprehensive, enterprise-wide implementation strategy and plan, as well as the actual oversight of the implementation.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the department will evaluate the proposals as to the private consultant's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the RFP.

Deadlines: The department must receive proposals prepared according to instructions in the RFP package on or before April 8, 2011 at 3:00 p.m.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Janice Mullenix, 125 East 11th Street, Austin, Texas 78701-2483. Email: Janice.Mullenix@txdot.gov, telephone number (512) 374-5120 and Fax (512) 374-5121. Copies will also be available on the Electronic State Business Daily (ESBD) at (<http://esbd.cpa.state.tx.us/>).

TRD-201101086

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 16, 2011



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 36 (2011) is cited as follows: 36 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 "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 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)