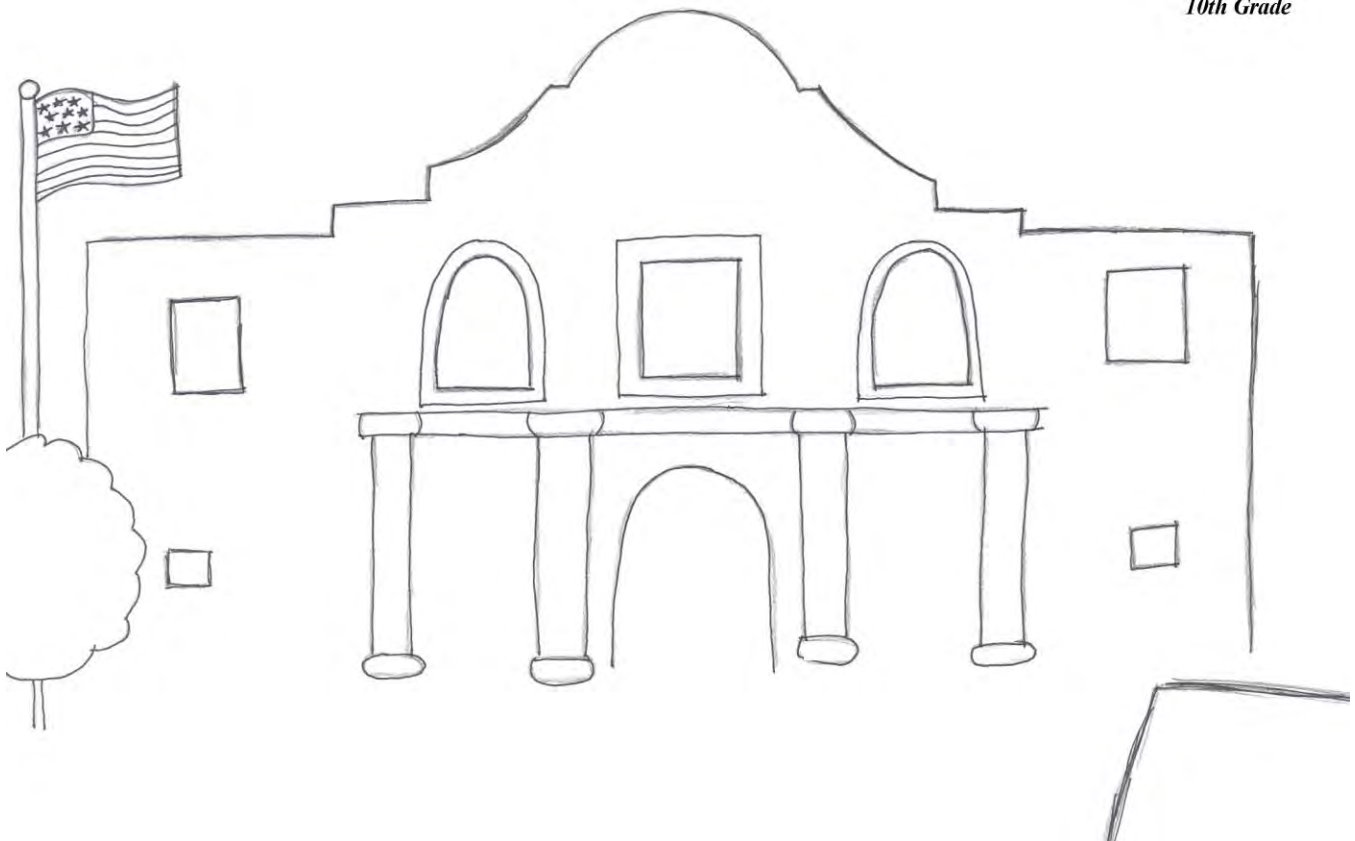

TEXAS REGISTER

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*Amber Uballe
10th 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.

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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 23. ROSE GRADING

4 TAC §§23.1, 23.2, 23.4, 23.5

(Editor's note: The text of the following sections proposed for repeal will not be published.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

The Texas Department of Agriculture (the department) proposes the repeal of Chapter 23, §§23.1, 23.2, 23.4, and 23.5, concerning rose grading. The repeal is proposed to implement provisions of House Bill 3199, 82nd Legislative Session, 2011 (HB 3199), which eliminated the requirements and penalties related to rose grading described in Chapter 12 of the Texas Agriculture Code and repealed Texas Agriculture Code, Chapter 121 in its entirety, eliminating grading and labeling requirements for roses.

Dr. Shashank Nilakhe, State Entomologist, has determined that, for the first five-year period the repeal is in effect, there will be no fiscal implications for state government as a result of the elimination of rose grading. There will be no fiscal implications for local government.

Dr. Nilakhe also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administration and enforcement of the repeal will be the elimination of unnecessary rules. There will be no adverse fiscal impact on individuals, microbusinesses, or small businesses required to comply with the repeal. The rose industry will realize cost savings incurred in grading and labeling of the roses, but the amount cannot be determined due to the lack of the data needed to make such a determination.

Written comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Agriculture Code, Chapter 121, as amended by House Bill 3199, which eliminates the requirements and penalties related to rose grading; and takes effect immediately since it received a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution.

The proposal affects the Texas Agriculture Code, Chapter 121.

§23.1. *Definitions.*

§23.2. *Exemptions.*

§23.4. *Labeling.*

§23.5. *Violations and Penalties.*

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 June 6, 2011.

TRD-201102011

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: July 17, 2011

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



CHAPTER 26. FOOD AND NUTRITION DIVISION

SUBCHAPTER A. TEXAS PUBLIC SCHOOL NUTRITION POLICY

4 TAC §26.6

The Texas Department of Agriculture (the department) proposes an amendment to §26.6, concerning the Texas Public School Nutrition Policy (TPSNP). The amendment to §26.6(c) is proposed to clarify a provision of the TPSNP. The department has received numerous questions about this provision. The proposed amendment to §26.6(c) provides that for the purposes of implementation of the TPSNP, the department does not recognize the exceptions the United States Department of Agriculture has made and listed for certain foods of minimal nutritional value.

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

Ms. Olige also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amended section will be that students attending public schools that participate in the National School Lunch Program will have access to a healthier nutrition environment. There will be no fiscal impact on individuals, microbusinesses or small businesses required to comply with the amendment. The proposal is clarifying a current requirement.

Comments on the proposal may be submitted to, Angela Olige, Assistant Commissioner for Food and Nutrition Programs, Texas

Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the National School Lunch Program, the School Breakfast Program, and the Summer Food Service Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

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

§26.6. *Foods of Minimal Nutritional Value (FMNV).*

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

(c) Exceptions. USDA has approved exceptions for certain products included in the above categories. Those exceptions are not recognized and are not allowed as part of the Texas Public School Nutrition Policy. [See the Texas Department of Agriculture's Food and Nutrition Division's Administrators Reference Manual, for the current list of these exemptions.]

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 June 6, 2011.

TRD-201102012

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: July 17, 2011

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



PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 38. TRICHOMONIASIS

4 TAC §§38.1, 38.3, 38.6, 38.8

The Texas Animal Health Commission (Commission) proposes amendments to §38.1, concerning Definitions, §38.3, concerning Infected Bulls and Herds, §38.6, concerning Official Trichomoniasis Tests, and §38.8, concerning Herd Certification Program--Breeding Bulls.

The Commission convened the Bovine Trichomoniasis Working Group (BTWG) in 2008, to provide recommendations to the Commission on the components and implementation strategy for a Trichomoniasis Control Program for the State of Texas. The BTWG recently completed an annual review of the Trichomoniasis program and made recommendations to the Commission on amendments to the Trich program. The BTWG also recommended that the program should be continued as provided through §38.7.

Representatives of the BTWG met on May 4, 2011, to review specific requests for program changes received and to evaluate the effectiveness of current rules. Requests were received from cattle producers, auction market operators, veterinarians, and Commission personnel. State Epidemiologist Dr. Andy Schwartz gave an overview of the statewide program, and

Region 7 Director Dr. Tommy Barton provided the agency perspective from a field office dealing directly with veterinarians, herd owners and market operators. Dr. Alfonso Clavijo gave the TVMDL perspective on the Trich program and provided handouts showing the test prevalence and distribution of positive bulls across the state over the past year. He also discussed an ongoing T. foetus PCR pooling study being coordinated by the Parasitological Committee of the AAVLD. The study is to determine the efficacy of pooling of samples for T. foetus testing by real-time PCR. The study will also look at DNA degradation with continued incubation. Results are to be reported at the annual AAVLD meeting in September 2011.

The group made a number of recommendations associated with these requirements. The first area of change was in §38.1, which provides definitions for terms utilized in this chapter. The recommendation was to change the definition of "Exempt Cattle" from "Cattle that have been physically rendered sterile for breeding" to "Cattle that have been physically rendered incapable of intro-mission at a facility recognized by the TAHC". The reason was to more clearly identify the type of procedure that is recognized as acceptable by the veterinary community.

The next changes were for §38.3, which is entitled "Infected Bulls and Herds". This describes how infected bulls and their associated herds are handled. In subsection (a) requirements are added to address retesting of positive bulls. Breeding bulls which have been disclosed as reactors may be retested under specific circumstances. The animal owners, or their agents, must make a request to the TAHC Regional Director where the bull is located. The retest(s) must be conducted within 30 days after the date of the original test. The test(s) must be submitted to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL). The positive bull must be held under quarantine along with all other exposed bulls on the premise and they must have two negative PCR tests to be released. There is also a change to subsection (c) by adding that breeding bulls that were in a herd with a positive and needing to be retested must be retested within sixty (60) days. This is to ensure that that testing is done in an appropriate timeframe.

The Commission is adding a new subsection (d) which provides that breeding bulls in a herd with positive bulls may be maintained without meeting the requirements of two (2) negative tests within sixty (60) days, provided they execute a herd control plan. If so, then all breeding bulls may be tested annually. This will only be authorized for a maximum of three (3) years, then all exposed bulls shall be tested in accordance with this section.

The next section for recommended changes is §38.6, which is entitled "Official Trichomoniasis Tests". Basically, this amendment is to allow the approved laboratory to pool individually submitted samples to be PCR tested. This must be approved by the TAHC Regional Office where the animals are located, but it is intended to allow the producer to reduce their testing cost. However, veterinary practitioners may not submit pooled samples for either releasing test.

The last section to be amended is §38.8 and is entitled "Herd Certification Program--Breeding Bulls". Under the current subsection (b) there is a conflict in the language. The rule indicates for the first three years of testing to qualify for the herd certification it is necessary for all non-virgin bulls to be tested, but it also indicated they could be sent to slaughter without being tested. All bulls need to be tested even if going to slaughter in order to ensure that positive animals are removed from the herd. If slaughter bulls were not tested they could have Trichomoniasis

and maintain infection in the herd without being disclosed. This was an unintentional loophole that is closed through this amendment.

FISCAL NOTE

Dr. Matt Cochran, DVM, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. 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 cattle breeders or raisers. The purpose of the proposed amendments is to make changes to the program as recommended by the BTWG. These changes include making the requirements entering the state clearer to understand and more effective in helping a herd owner to manage, control or prevent introduction of the disease into their herd. For these reasons, the Commission has determined that there is not an adverse impact on cattle raisers and breeders and, therefore, there is no need to do an EIS. Implementation of these rules 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 rules are in effect, the public benefit is the requirements for entering the state are clearer to understand and more effective in helping a herd owner to manage, control or prevent introduction of the disease into their herd, as well as to provide some pragmatic options in managing their herds.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules 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. The proposed amendments are 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 are, 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 may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. 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.

§38.1. Definitions.

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

(1) Accredited Veterinarian--A licensed veterinarian who is approved to perform specified functions required by cooperative state-federal disease control and eradication programs pursuant to Title 9 of the Code of Federal Regulations, Parts 160 and 161.

(2) Affected Herd--Any herd in which any cattle have been classified as *Trichostrongylus axei* positive on an official test and which has not completed the requirements for elimination of the disease from the herd.

(3) Cattle--All dairy and beef animals (genus *Bos*) and bison (genus *Bison*).

(4) Certified Veterinarians--Veterinarians certified with, and approved by the Commission to collect Trichostrongyliasis samples for official Trichostrongyliasis testing and to perform any other official function under the Trichostrongyliasis program.

(5) Commission--The Texas Animal Health Commission.

(6) Executive Director--The Executive Director of the Texas Animal Health Commission or his designee.

(7) Exempt Cattle (from testing requirements)--Cattle that have been physically rendered incapable of intromission at a facility recognized by the TAHC [sterile for breeding].

(8) Exposed Cattle--Cattle that are part of an affected herd or cattle that have been in contact with Trichostrongyliasis infected cattle.

(9) Herd--

(A) All cattle under common ownership or supervision or cattle owned by a spouse that are on one premise; or

(B) All cattle under common ownership or supervision or cattle owned by a spouse on two or more premises that are geographically separated, but on which the cattle have been interchanged or where there has been contact among the cattle on the different premises. Contact between cattle on the different premises will be assumed unless the owner establishes otherwise and the results of the epidemiological investigation are consistent with the lack of contact between premises; or

(C) All cattle on common premises, such as community pastures or grazing association units, but owned by different persons. Other cattle owned by the persons involved which are located on other premises are considered to be part of this herd unless the epidemiological investigation establishes that cattle from the affected herd have not had the opportunity for direct or indirect contact with cattle from that specific premises. Approved feedlots and approved pastures are not considered to be herds.

(10) Herd Test--An official test of all non-virgin bulls in a herd.

(11) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

(12) Infected Cattle--Any cattle determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as infected.

(13) Infected Herd--The non-virgin bulls in any herd in which any cattle have been determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as being infected.

(14) Movement Restrictions--A "Hold Order," "Quarantine," or other written document issued or ordered by the Commission to restrict the movement of livestock or exotic livestock.

(15) Negative--Cattle that have been tested with official test procedures and found to be free from infection with Trichomoniasis.

(16) Official Identification/Officially Identified--The identification of livestock by means of an official identification device, official eartag, registration tattoo, or registration brand, or any other method approved by the Commission and/or Administrator of APHIS that provides unique identification for each animal. Official identification included USDA alpha-numeric metal eartags (silver bangs tags), 840 RFID tags, 840 bangle tags, official breed registry tattoos, official breed registry individual animal brands, and official Trich tags issued by the animal health official of the state of origin of imported bulls.

(17) Official Trichomoniasis test--A test for bovine Trichomoniasis, approved by the Commission, applied and reported by TVMDL or any other laboratory classified as an official laboratory by the Commission. The test document is valid for sixty (60) days and may be transferred within that timeframe with an original signature of the consignor.

(18) Positive--Cattle that have been tested with official test procedures and found to be infected with Trichomoniasis.

(19) Permit (VS 1-27)--A premovement authorization for movement of infected or exposed cattle from the farm or ranch of origin through marketing channels to slaughter or for movement of untested animals to a location where the animals will be held under hold order until testing has been accomplished.

(20) Quarantine--A written Commission document or a verbal order followed by a written order restricting movement of

animals because of the existence of or exposure to Trichomoniasis. The Commission may establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may establish a quarantine to prohibit or regulate the movement of any article or animal that the commission designates to be a carrier of Trichomoniasis and/or an animal into an affected area, including a county district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

(21) Test-Eligible Cattle--All sexually intact non-virgin male cattle and all sexually intact male cattle which have erupting or erupted permanent incisor teeth (or older), which are being imported into the state of Texas or is being sold, leased, gifted or exchanged in the state of Texas for breeding purposes.

(22) Trichomoniasis--A venereal disease of cattle caused by the organism *Trichomonas foetus*.

(23) TVMDL--The official laboratory for testing is the Texas Veterinary Medical Diagnostic Laboratory.

(24) Virgin Bull--Sexually intact male cattle which have not serviced a cow and which are not more than 24 months of age as determined by the presence of the two permanent central incisors in wear or birth date on breed registry papers certified by the breeder; or not more than 30 months of age and certified by both the breeder based on birth date and confirmed by his veterinarian that the bull facility is sufficient to prevent contact with female cattle. The certification by the breeder is valid for sixty (60) days and may be transferred within that timeframe with an original signature of the consignor.

§38.3. *Infected Bulls and Herds.*

(a) Bulls that have been determined to be infected by culture or by RT-PCR test and/or by confirmatory RT-PCR test shall be placed under hold order along with all other non-virgin bulls in the bull herd. Infected bulls must be isolated from all female cattle from the time of diagnosis until final disposition or as directed by the Commission. Breeding bulls which have been disclosed as reactors may be retested provided: the owners, or their agents initiate a request to the TAHC Regional Director where the bull is located; that retests are conducted within 30 days after the date of the original test; test samples for retests are submitted to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) for testing; and the positive bull is held under quarantine along with all other exposed bulls on the premise. If they are retested, they must have two negative tests by PCR to be released within 30 days of the initial test.

(b) Positive bulls may be moved directly to slaughter or to a livestock market for sale directly to slaughter. In order to move, the bulls shall be individually identified by official identification device on a VS 1-27 movement permit from the ranch to the market and from the market to the slaughter facility, or from the ranch directly to the slaughter facility. Movement to slaughter shall occur within 30 days from disclosure of positive test results (or confirmatory test results) or as directed by the Commission.

(c) All bulls that are part of a herd in which one or more bulls have been found to be infected shall be placed under hold order in isolation away from female cattle until they have undergone at least two additional culture tests with negative results (not less than a total of three negative culture tests or two negative RT-PCR tests) within 60 days of the initial test unless handled in accordance with subsection (d) of this section. All bulls remaining in the herd from which an infected bull(s) has been identified would have to be tested two more times by culture or one more time by RT-PCR test. Any bull positive on the second or third test would be classified as positive. All bulls negative

to all three culture tests or both RT-PCR tests would be classified as negative and could be released for breeding.

(d) A quarantined herd with breeding bulls that tested negative on the initial test may be maintained with the herd if they develop a Trichomoniasis herd control plan, with the herd owner and their private veterinarian, that will address herd management practices to address this disease and have all breeding bulls tested annually. This will only be authorized for a maximum of three (3) years, then all exposed bulls shall be tested in accordance with this section.

§38.6. Official Trichomoniasis Tests.

Approved Tests. Approved tests for trichomoniasis testing within the State of Texas shall include the culture or Real Time Polymerase Chain Reaction (RT-PCR) testing of samples collected into an InPouch by certified veterinarians following approved collection, handling and shipping protocols, then tested in approved laboratories.

(1) Official Culture Tests. An official test is one in which the sample is received in the official laboratory, in good condition, within forty-eight (48) hours of collection and such sample is tested according to the "Official Protocol for Culture of Trichomoniasis." Samples in transit for more than forty-eight (48) hours will not be accepted for official culture testing. During transportation, the organisms should be protected from exposure to daylight and extremes of temperature, which should remain above 15 degrees Celsius (59 degrees Fahrenheit) and below 37 degrees Celsius (98.6 degrees Fahrenheit).

(2) Official Polymerase Chain Reaction Tests. Polymerase Chain Reaction is accepted as an official test or an official confirmatory test when completed by a qualified laboratory, approved by the Executive Director, and the sample is received in good condition by the laboratory within forty-eight (48) hours after collection, or is incubated by the collecting veterinarian for 48 hours after collection, then submitted to arrive at the laboratory within 96 hours of collection. Trichomoniasis samples pooled at the laboratory may qualify as the official test for one of the two tests required to release the quarantine if approved by the TAHC Regional Office where the animals are located. Veterinary practitioners may not submit pooled samples for either releasing test.

(3) Other Official Tests. Other tests for Trichomoniasis may be approved by the Commission, as official tests, after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established.

§38.8. Herd Certification Program--Breeding Bulls.

(a) The owner of all non-virgin breeding bulls shall sign an agreement with the Commission and be tested annually for T. foetus for the three (3) consecutive years following the adoption of this rule.

(b) During the three (3) year inception period, all non-virgin breeding bulls with changes of ownership, leased, rented or otherwise shall be tested for T. foetus within 30 days prior to such change [~~un-~~less consigned direct to slaughter]. The test will be completed and test results known prior to the time a bull(s) is physically transferred to the receiving premises or herd.

(c) Negative T. foetus bulls will be identified with the official identification.

(d) All slaughter bulls removed from the herd will be tested for T. foetus. The test may be performed at a slaughter facility if prior arrangement with a veterinarian and an appropriate agreement with the slaughter facility management is made.

(e) Bovine females added to a certified herd shall not originate from a known T. foetus infected herd. Female herd additions must

originate from a certified T. foetus free herd or qualify in one of the following categories:

(1) calf at side and no exposure to other than known negative T. foetus bulls;

(2) checked by an accredited veterinarian, at least 120 days pregnant and so recorded;

(3) virgin; or

(4) heifers exposed as virgins only to known negative T. foetus infected bulls and not yet 120 days pregnant.

(f) Records must be maintained for all tests including all non-virgin bulls entering the herd and made available for inspection by a designed accredited veterinarian or state animal health official.

(g) All non virgin bulls shall be tested for T. foetus every two (2) years thereafter to maintain certification status.

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 June 6, 2011.

TRD-201102034

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: July 17, 2011

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



CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.8

The Texas Animal Health Commission (Commission) proposes amendments to §51.8, concerning Cattle.

The Commission convened a Bovine Trichomoniasis Working Group (BTWG) in 2008, to provide recommendations to the Commission on the components and implementation strategy for a Trichomoniasis Control Program for the State of Texas. The BTWG recently completed an annual review the Trichomoniasis program and made recommendations to the Commission on amendments to the Trich program. The BTWG also recommended that the program should be continued as provided through §38.7.

Representatives of the BTWG met on May 4, 2011, to review specific requests for program changes received and to evaluate the effectiveness of current rules. Requests were received from cattle producers, auction market operators, veterinarians, and Commission personnel. Specific modifications to the Commission's entry requirements for out of state breeding bulls were recommended and are being acted on through this proposal.

The group made several recommendations for modifications to §51.8(c) dealing with Trichomoniasis requirements for breeding bulls entering Texas. The rules currently provide that breeding bulls less than 24 months of age may enter on a virgin certificate from the bull owner. However, the group discussed the fact that this is an area where there can be fraud in representing the virgin status of the animal and thereby increases the risk of positive bulls being shipped to Texas. As such, the group recommended that the Commission drop the age for not being tested down to 12 months and remove the virgin certificate requirement. The

Commission agreed and is modifying that subsection to remove that standard and more clearly coordinate the rule. Also, it was recommended for out of state breeding bulls that we no longer recognize the Culture Test. The Culture Test can have great discrepancy in test results and in order to reduce the risk of positive animals entering the state, that test will no longer be recognized for entry. Lastly, we will allow untested bulls from out of state to enter Texas direct to a feedyard that has executed a Trichomoniasis Certified Facility Agreement, if they are on a VS 1-27 permit and accompanied by an entry permit issued by the Commission, because this type of movement with bulls destined to slaughter are a reduced risk for Trichomoniasis exposure.

FISCAL NOTE

Dr. Matt Cochran, DVM, Assistant Executive Director of 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 purpose of the proposed amendments is make changes to the program as recommended by the BTWG to better protect the Texas Cattle Industry. The use of the virgin certificate was removed in order to better prevent positive animals from being allowed to enter as virgin animals. The use of the 12-month age will better ensure that these animals have not been exposed to the disease through breeding practices. Also, the use of the culture test is no longer accepted from outside the state since this test can be done outside of a lab environment which creates greater quality control issues and, therefore, is a higher risk for positives. The agency has evaluated the requirements and determined that there is not an adverse economic impact on cattle breeders or raisers, 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 is the Texas cattle industry can have greater confidence that this modified rule will prevent the introduction of Trich from out of state breeding bulls.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with 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. The proposed amendments are 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 are, 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 may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. 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, bison, domestic fowl, or exotic fowl.

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

§51.8. Cattle.

(a) Brucellosis requirements. All cattle must meet the requirements contained in §35.4 of this title (relating to Entry, Movement, and Change of Ownership). Cattle, which are parturient, postparturient, or 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers, being shipped to a feedyard prior to slaughter shall be officially individually identified with a permanent identification device prior to leaving the state of origin.

(b) Tuberculosis requirements.

(1) All beef cattle, bison and sexually neutered dairy cattle originating from a federally recognized accredited tuberculosis free state, or zone, as provided by Title 9 of the Code of Federal Regulations, Part 77, Section 77.8, or from a tuberculosis accredited herd are exempt from tuberculosis testing requirements.

(2) All beef cattle, bison and sexually neutered dairy cattle originating from a state or zone with anything less than a tuberculosis free state status and having an identified wildlife reservoir for tuberculosis or that have never been declared free from tuberculosis shall be tested negative for tuberculosis in accordance with the appropriate

status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, prior to entry with results of this test recorded on the certificate of veterinary inspection. All beef cattle, bison and sexually neutered dairy cattle originating from any other states or zones with anything less than free from tuberculosis shall be accompanied by a certificate of veterinary inspection.

(3) All dairy breed animals, including steers and spayed heifers, shall be officially identified prior to entry into the state. All sexually intact dairy cattle, that are two (2) months of age or older may enter provided that they are officially identified, and are accompanied by a certificate stating that they were negative to an official tuberculosis test conducted within 60 days prior to the date of entry. All sexually intact dairy cattle that are less than two (2) months of age must obtain a entry permit from the Commission, as provided in §51.2(a) of this chapter (relating to General Requirements), to a designated facility where the animals will be held until they are tested negative at the age of two (2) months. Animals which originate from a tuberculosis accredited herd, and/or animals moving directly to an approved slaughtering establishment are exempt from the test requirement. Dairy cattle delivered to an approved feedlot for feeding for slaughter by the owner or consigned there and accompanied by certificate of veterinary inspection with a entry permit issued by the commission are exempt from testing unless from a restricted herd. In addition all sexually intact dairy cattle originating from a state or area with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate requirements for states or zones with a status as provided by Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, for that status, prior to entry with results of the test recorded on the certificate of veterinary inspection.

(4) All "M" brand steers, which are recognized as potential rodeo and/or roping stock, being imported into Texas from another state shall obtain a permit, prior to entry into the state, in accordance with §51.2(a) of this chapter and be accompanied by a certificate of veterinary inspection which indicates that the animal(s) were tested negative for tuberculosis within twelve months prior to entry into the state.

(5) All other cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status, would enter by meeting the requirements for a state with similar status as stated in paragraphs (1), (2) and (3) of this subsection.

(6) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status.

(A) To be held for purposes other than for immediate slaughter or feeding for slaughter in an approved feedyard or approved pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian, and shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed by a veterinarian employed by the TAHC or APHIS/VS.

(B) When destined for feeding for slaughter in an approved feedyard, cattle must be tested at the port-of-entry into Texas under the supervision of the port veterinarian; moved directly to the approved feedyard only in sealed trucks; accompanied with a VS 1-27 permit issued by TAHC or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.

(7) Cattle originating from Mexico.

(A) All sexually intact cattle shall meet the requirements provided for in paragraph (6) of this subsection.

(B) Steers and spayed heifers from Mexico shall meet the federal importation requirements as provided in Title 9 of the Code of Federal Regulations, Part 93, Section 93.427, regarding importation of cattle from Mexico. In addition to the federal requirements, steers and spayed heifers must be moved under permit to an approved pasture, approved feedlot, or approved pens.

(C) Cattle utilized as rodeo and/or roping stock shall meet the requirements set out in paragraph (6)(A) of this subsection and the applicable requirement listed in clauses (i) and (ii) of this subparagraph:

(i) All sexually intact cattle shall be retested annually for tuberculosis at the owner's expense and the test records shall be maintained with the animal and available for review.

(ii) All sexually neutered horned cattle imported from Mexico are recognized as potential rodeo and/or roping stock and must:

(I) be tested for tuberculosis at the port of entry under the supervision of the USDA port veterinarian;

(II) be moved by permit to a premise of destination and remain under Hold-Order, which restricts movement, until permanently identified by methods approved by the commission, and retested for tuberculosis between 60 and 120 days after entry at the owner's expense. The cattle may be allowed movement to and from events/activities in which commingling with other cattle will not occur and with specific permission by the TAHC until confirmation of the negative post entry retest for tuberculosis can be conducted; and

(III) be retested for tuberculosis annually at the owner's expense and the test records shall be maintained with the animal and available for review.

(D) Regardless of reproductive status, test history, or Mexican State of origin, Holstein and Holstein cross cattle are prohibited from entering Texas.

(E) All cattle moved into Texas from Mexico shall be identified with an "M" brand prior to moving to a destination in Texas.

(F) A copy of the certificate issued by an authorized inspector of the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the movement of Mexico cattle into Texas must accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

(c) Trichomoniasis Requirements:

(1) All breeding bulls entering the state [~~shall be virgin bulls not~~] more than 12 [~~24~~] months of age shall [~~as determined by the presence of both permanent central incisor teeth in wear, or by breed registry papers; or~~] be tested negative for Trichomoniasis with an [~~official culture test or~~] official Polymerase Chain Reaction (PCR) test within 30 days prior to entry. Breeding [~~into the state. Bulls that have had contact with female cattle subsequent to testing must be retested prior to entry. If the breeding~~] bulls [~~are virgin bulls they~~] shall be individually identified by an official identification device and be accompanied with a certificate of veterinary inspection, indicating the age [~~breeders certification of virgin status signed by the breeder or his representative attesting that they are virgin bulls~~]. The official identification number shall be written on the [~~breeder's~~] certificate of veterinary inspection. [~~All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected.~~] Official identification includes: Official Alpha-numeric USDA metal eartags (bangs tags), Official 840 RFID tags, Official 840 flap or bangle tags, and Official individual animal breed registry tattoo or breed registry individual animal brands, or official state of origin Tri-

chomoniasis tags. Bulls older than 12 months of age ~~[The identifica- tion shall be recorded on the test documents or the breeder's certificate and the certificate of veterinary inspection prior to entry. Non-virgin bulls]~~ shall be tested ~~[three times not less than one week apart, for each test, by official culture test or]~~ one time by an official PCR test prior to entry into Texas. Breeding bulls, entering Texas as a recent resident, enrolled at a [from] CSS certified artificial insemination facility [facil- ities] where the bull(s) [animal(s)] was isolated from female cattle and accompanied by documents with an original signature by the veterinar- ian or manager of the facility, are exempt from the test requirements. Untested bulls from out of state can enter Texas directly to a feedyard that has executed a Trichomoniasis Certified Facility Agreement, and are on a VS 1-27 permit and accompanied with an entry permit number issued by the Commission.

(2) All bulls entering Texas for the purpose of participat- ing at fairs, shows, exhibitions and/or rodeos, which are twelve (12) months of age or older and capable of breeding may enter the state without testing ~~[or certification]~~ for Trichomoniasis, but shall obtain a permit, in accordance with §51.2(a) of this chapter, prior to entry ~~[into the state]~~. Bulls permitted for entry into the State of Texas under the provisions of this subsection shall not be commingled with female cat- tle or used for breeding. Bulls that stay in the state more than sixty (60) days must be tested negative for Trichomoniasis with an official ~~[culture test or]~~ official PCR test.

(3) All breeding bulls entering from Mexico or from any country that does not have an established Trichomoniasis testing pro- gram, shall enter on and be moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this chapter, to a premises of destination in Texas and remain under Hold Order until tested negative for Trichomoniasis with not less than three official culture tests conducted not less than seven (7) days apart, or an official PCR test, within thirty (30) days after entry into the state. All bulls shall be maintained separate from female cattle until tested nega- tive for Trichomoniasis. The Hold Order shall not be released until all other post entry disease testing requirements have been completed. All bulls tested for Trichomoniasis shall be identified by an official identifica- tion device or method at the time the initial test sample is collected. The identification shall be recorded on the test documents.

(4) All breeding bulls entering from Canada or from any country that has an established Trichomoniasis testing program but for which the animals are not tested to meet the certification and testing requirements of paragraph (1) of this subsection, shall enter on and be moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this chapter, to a premises of destination in Texas and remain under Hold Order until tested negative for Tri- chomoniasis with not less than three (3) official culture tests conducted not less than seven (7) days apart, or an official PCR test within thirty (30) days of entry into the state. All bulls shall be maintained separate from female cattle until tested negative for Trichomoniasis. All bulls tested for Trichomoniasis shall be identified by an official identifica- tion device or method at the time the initial test sample is collected. The identification shall be recorded on the test documents.

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

Filed with the Office of the Secretary of State on June 6, 2011.
TRD-201102035

Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 17, 2011
For further information, please call: (512) 719-0724

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CHAPTER 59. GENERAL PRACTICES AND PROCEDURES

4 TAC §59.11

The Texas Animal Health Commission (Commission) proposes amendments to §59.11, concerning Certificate of Veterinary In- spections.

Animals being exported or transported to locations such as live- stock shows must be inspected and/or tested by an accredited veterinarian to ensure they meet the testing and certification re- quirements of the destination authority and that required infor- mation is recorded on a CVI. The Commission issues CVIs to veterinarians and the veterinarians fill in the relevant information upon inspection and/or testing of the animals. The Commission currently issues three types of CVIs: 1.) "Certificate of Veteri- nary Inspection" TAHC Form 00-10; 2.) "Equine Certificate of Veterinary Inspection" TAHC Form 99-08; and 3.) "Equine Inter- state Movement Passport" TAHC Form 00-02.

Section 161.0601(d) of the Texas Agriculture Code authorizes the Commission to establish a fee for the certificate. In 2005, the Commission established a fee of \$5.00 for each certificate. Based on the overall increasing costs of the agency in supporting this mission, the Commission is proposing to increase the fee from \$5.00 to \$7.00 per certificate.

FISCAL NOTE

Dr. Matt Cochran, DVM, Assistant Executive Director of Admin- istration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no signif- icant additional fiscal implications for local or state government as a result of enforcing or administering the rule. This rule and any resultant increase in revenue will support existing disease programs administered by the Commission. Based on the rate at \$7.00 per certificate and assuming 75,000 certificates are is- sued each fiscal year, the agency anticipates collecting a total of approximately \$525,000 per fiscal year. Out of this total revenue, the TAHC will distribute (under budgetary mandate) \$375,000 in unappropriated funds into the GR account and the remaining rev- enue, \$150,000 per fiscal year for a total of \$300,000 revenue during the biennium, can support Commission disease programs and efforts. These funds will also assist the agency with certifi- cate production and distribution 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 allow the Commission to maxi- mize its appropriation of general revenue funds by applying the net revenues collected as a cost recovery mechanism to offset the costs of state services and regulatory functions that the Com- mission is statutorily charged to perform. Such a cost recovery mechanism advances and supports successful program imple- mentation efforts in support of the agency's mission of:

- * protecting the animal industry from, and/or mitigate the effects of domestic, foreign and emerging diseases;
- * increasing the marketability of Texas livestock commodities at the state, national and international level;
- * promoting and ensuring animal health and productivity;
- * protecting human health from animal diseases and conditions that are transmissible to people;
- * preparing for and responding to emergency situations involving animals.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with 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. The proposed amendment 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 amendment 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 amendment is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Section 161.0601 authorizes the Commission through rulemaking to issue and set the fee for a certificate of veterinary inspection for the transport of domestic and exotic livestock and fowl. Furthermore, 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. 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 may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. That authority is found in §161.048.

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

§59.11. *Certificate of Veterinary Inspections.*

(a) All Veterinarians, licensed and accredited in Texas, that utilize a certificate of veterinary inspection (CVI) for livestock, exotic livestock or domestic fowl shall utilize a current CVI issued by the Commission on or after September 1, 2005. All certificates printed and issued prior to September 1, 2005 will be null and void for issuance after October 31, 2005.

(b) The Commission shall assess a fee of seven (\$7.00) [~~five (\$5.00)~~] dollars for each individual CVI. CVI's will be sold in books of ten (10) certificates per book.

(c) The CVI may be procured from the Commission through a written request accompanied by a check or money order, for the full amount to cover the requested number of CVI's. The written request shall be sent to TAHC, P.O. Box 12966, Austin, Texas 78711-2966. When established the Commission may also accept phone orders when paid for by an accepted credit card. Phone orders may be made by calling 1-800-550-8242.

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 June 6, 2011.

TRD-201102036

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: July 17, 2011

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



TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.12, §113.14

The Texas State Securities Board proposes amendments to §113.12, concerning applicability of guidelines to exempt offerings, and §113.14, concerning statements of policy. The amendment to §113.12 would correct cross-references in the rule to reflect that certain statements of policy ("SOPs") adopted by the North American Securities Administrators Association ("NASAA") are adopted by reference in §113.14. The amendment to §113.14 would add the NASAA Registration of Commodity Pool Programs, as amended on May 7, 2007, to the list of SOPs that are adopted by reference and utilized when reviewing applications for registration of securities. Text of the SOPs listed in §113.14 are available on the NASAA web site (www.nasaa.org) or by contacting the Agency at (512) 305-8300.

Patty Louthback, Director, Registration Division, has determined that for the first five-year period the rules are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Louthback also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to increase uniformity with other states when reviewing applications to register securities. There will be no effect on micro- or small businesses. There is no

anticipated economic cost to persons who are required to comply with the rules as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to Kara L. Kennedy, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendments are proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-7.

§113.12. Applicability of Statements of Policy [Guidelines] to Exempt Offerings.

This chapter and the statements of policy [guidelines] listed in §113.14 of this title (relating to Statements of Policy) [section] do not apply to offerings made pursuant to an exemption under either the Texas Securities Act, §5 or §6, or an exemption by Board rule pursuant to the Texas Securities Act, §5.T, or to an offering of federal covered securities, as that term is defined in §107.2 of this title (relating to Definitions). [~~In other words, the requirements contained in one of the following guidelines would apply only to an offering for which an application for registration is filed with the Securities Commissioner:~~]

~~{(1) Chapter 117 of this title (relating to Administrative Guidelines for Registration of Real Estate Programs);}~~

~~{(2) Chapter 121 of this title (relating to Administrative Guidelines for Registration of Oil and Gas Programs);}~~

~~{(3) Chapter 129 of this title (relating to Administrative Guidelines for Registration of Asset-Backed Securities);}~~

~~{(4) Chapter 141 of this title (relating to Administrative Guidelines for Registration of Equipment Programs); and}~~

~~{(5) Chapter 143 of this title (relating to Administrative Guidelines for Registration of Real Estate Investment Trusts).}~~

§113.14. Statements of Policy.

(a) (No change.)

(b) In order to promote uniform regulation, the following NASAA Statements of Policy shall apply to the registration of securities:

(1) - (17) (No change.)

(18) Mortgage Program Guidelines [Programs], as amended by NASAA on May 7, 2007; [~~and~~]

(19) Omnibus Guidelines, as amended by NASAA on May 7, 2007; [~~and~~]

(20) Registration of Commodity Pool Programs, as amended by NASAA on May 7, 2007.

(c) (No change.)

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

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Benette L. Zivley

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.2

The Texas State Securities Board proposes an amendment to §115.2, concerning application requirements. The amendment would remove the requirement that a dealer's Designated Officer ("D.O.") also be designated by the dealer as a control person on the Form BD. Instead it would require that a dealer register as its D.O. any officer, partner, or sole proprietor, all of whom would meet the definition of "control" set forth in §115.1(a)(4). It would also require an individual filing a dealer application as a sole proprietor to submit a Form U-4. The Form U-4 provides staff with valuable information on customer complaints, arbitrations and criminal histories that is not provided on the Form BD. This information is required for all other dealers, is necessary for the staff's evaluation of sole proprietor dealers, and is required for sole proprietors by some other states. A related change to §115.8 is being proposed to reduce the total filing fee paid by sole proprietor dealers by requiring them to continue to pay the fee for filing the Form BD but not the fee for filing the Form U-4.

Patty Louterback, Director, Registration Division, and Ronak Patel, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Louterback and Mr. Patel also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to streamline the application review process by ensuring that a dealer's D.O. is a person who meets the definition of control even though the person may not be specifically designated as a "control person" by the dealer on its Form BD and enable staff to obtain enhanced information on sole proprietor dealers that is not otherwise provided on the dealer's Form BD.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES

The Agency estimates that the projected economic impact of the proposed amendment to §115.2 requiring an individual filing a dealer application as a sole proprietor to submit a Form U-4 will be a possible processing fee in the current amount of \$85 that may be imposed by the Financial Industry Regulatory Authority (FINRA) on its members. However, few sole proprietors are members of FINRA.

In preparing the proposal, the Agency considered several alternative methods for achieving the purposes of the rule amendment. One, the Agency considered not modifying the application requirements for small or micro-businesses, but the Agency determined that the additional information provided in the Form U-4 was necessary to better evaluate applicants, including sole proprietors, for the better protection of investors. Two, the Agency

considered implementing different requirements for small or micro-broker-dealer firms, but decided the information provided in the Form U-4 is necessary for all broker-dealer firms, including sole proprietors. Finally, the Agency considered not adopting the proposed rule amendment, but decided instead that varying from what is required of all other broker-dealer firms and from what is required by similar rules for sole proprietors already adopted by other states would not be consistent with the health, safety and economic welfare of the state.

Ms. Louterback and Mr. Patel also have determined that, except for the costs discussed above, there are no additional anticipated economic costs to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to Kara L. Kennedy, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

§115.2. Application Requirements.

(a) (No change.)

(b) Designated officer registration. Dealers, including an individual filing as a sole proprietor, must file a Form U-4 application for a designated officer to register ~~[an officer or partner]~~ in connection with the registration of the dealer. The dealer's designated officer must be an officer, partner, or the sole proprietor of the dealer and have completed [The officer or partner must be a control person of the dealer. The officer or partner must complete] the necessary registration and examination requirements. [An applicant may designate as its officer or partner a control person registered in Texas via the Central Registration Depository System maintained by FINRA.] If the designated officer of a dealer, other than a sole proprietor, ~~[officer or partner]~~ resigns or is otherwise removed from his or her position, the dealer ~~[firm]~~ shall make an application to register another officer or partner within 30 days.

(c) - (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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Benette L. Zivley

Securities Commissioner

State Securities Board

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7 TAC §115.8

The Texas State Securities Board proposes an amendment to §115.8, concerning fee requirements. The amendment would reduce the Form U-4 filing fees for an individual filing a dealer application as a sole proprietor who would also be required to file a Form U-4 application to register as a designated officer under the proposed changes to §115.2. The Board is permitted to accommodate a small business required to register in two or more capacities by reducing the fees to be paid.

Patty Louterback, Director, Registration Division, and Ronak Patel, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Louterback and Mr. Patel also have 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 certain small businesses required to register a sole proprietor in multiple capacities can receive relief from payment of the full fees required under the Texas Securities Act. There will be no adverse effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to Kara L. Kennedy, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

The proposal affects Texas Civil Statutes, Article 581-12, 581-13, 581-18, 581-35, 581-41, and 581-42.

§115.8. Fee Requirements.

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

(c) Reduced fees for sole proprietor dealers. A person seeking registration in multiple capacities as a sole proprietor dealer and as the designated officer of that sole proprietor dealer shall pay only the fee required in connection with the original or renewal application for registering as a sole proprietor dealer.

(d) ~~[(e)]~~ Fees for concurrent registrations. Notwithstanding the Texas Securities Act, §§35 and 41, a person shall pay only one fee required under those sections to engage in business in this state concurrently for the same person or company as:

- (1) a dealer and an investment adviser; or
- (2) an agent and an investment adviser representative.

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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Benette L. Zivley
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State Securities Board

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTA- TIVES

7 TAC §116.1

The Texas State Securities Board proposes an amendment to §116.1, concerning general provisions. The amendment would add the definition of "Officer" found in §107.2 (relating to definitions) to Chapter 116.

Patty Louterback, Director, Registration Division, and Ronak Patel, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Louterback and Mr. Patel also have 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 easier location of the definition for a term used in the chapter. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to Kara L. Kennedy, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

§116.1. General Provisions.

(a) Definitions. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) - (12) (No change.)

(13) Officer--A president, vice president, secretary, treasurer, or principal financial officer, comptroller, or principal accounting officer, or any other person occupying a similar status or performing similar functions with respect to any organization or entity, whether incorporated or unincorporated.

(b) - (d) (No change.)

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

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7 TAC §116.2

The Texas State Securities Board proposes an amendment to §116.2, concerning application requirements. The amendment would remove the requirement that an investment adviser's Designated Officer ("D.O.") also be designated as a control person on the Form ADV. Instead it would require that an investment adviser register as its D.O. any officer, partner, or sole proprietor, all of whom would meet the definition of "control" set forth in §116.1. It would also require an individual filing an investment adviser application as a sole proprietor to submit a Form U-4. The Form U-4 provides staff with valuable information on customer complaints, arbitrations and criminal histories that is not provided on the Form ADV. This information is required for all other investment advisers, is necessary for the staff's evaluation of sole proprietor advisers, and is required for sole proprietors by some other states. A related change to §116.8 is being proposed to reduce the total filing fee paid by sole proprietor investment advisers by requiring them to continue to pay the fee for filing the Form ADV but not the fee for filing the Form U-4.

Patty Louterback, Director, Registration Division, and Ronak Patel, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Louterback and Mr. Patel also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to streamline the application review process by ensuring that an investment adviser's D.O. is a person who meets the definition of control even though the person may not be specifically designated as "control person" by the adviser on its Form ADV and enable staff to obtain enhanced information on sole proprietor investment advisers that is not otherwise provided on the adviser's Form ADV.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES

The Agency estimates that the projected economic impact of the proposed amendment to §116.2 requiring an individual filing an investment adviser application as a sole proprietor to submit a Form U-4 will be a possible set-up fee in the current amount of \$45 that may be imposed on users by the Investment Adviser Registration Depository (IARD). However, the IARD has waived the set-up fee each year since 2005. So, there currently is no adverse effect on small or micro-investment advisers.

In preparing the proposal, the Agency considered several alternative methods for achieving the purposes of the rule amendment. One, the Agency considered not modifying the application requirements for small or micro-businesses, but the Agency determined that the additional information provided in the Form U-4 was necessary to better evaluate applicants, including sole proprietors, for the better protection of investors. Two, the Agency considered implementing different requirements for small or micro-investment advisers, but decided the information provided in the Form U-4 is necessary for all investment advisers, including sole proprietors. Finally, the Agency considered not adopting the proposed rule amendment, but decided instead that varying from what is required of all other investment advisers and from what is required by similar rules for sole proprietors already adopted by other states would not be consistent with the health, safety and economic welfare of the state.

Ms. Louthback and Mr. Patel also have determined that, except for the costs discussed above, there are no additional anticipated economic costs to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to Kara L. Kennedy, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

§116.2. *Application Requirements.*

(a) (No change.)

(b) Designated officer registration. Investment advisers, including [other than] an individual filing as a sole proprietor, must file a Form U-4 application for a designated officer to register [an officer or partner] in connection with the registration of the investment adviser. The investment adviser's designated officer must be an officer, partner, or the sole proprietor of the investment adviser and have completed [The officer or partner must be a control person of the investment adviser. The officer or partner must complete] the necessary registration and examination requirements. If the designated officer of an investment adviser, other than a sole proprietor, [officer or partner] resigns or is otherwise removed from his or her position, the investment adviser [firm] shall make an application to register another officer or partner within 30 days.

(c) - (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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Benette L. Zivley
Securities Commissioner
State Securities Board

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For further information, please call: (512) 305-8303



7 TAC §116.5

The Texas State Securities Board proposes an amendment to §116.5, concerning minimum records. The amendment would eliminate the option for investment advisers to comply with the Securities and Exchange Commission's record-keeping rule to meet minimum record-keeping requirements. Experience indicates that this option is not being relied on by investment advisers inspected by the staff. In addition, many other states do not have such a provision. The amendment would also require investment advisers with a principal place of business located in Texas to collect and maintain certain basic information about the clients they advise. In approximately one-half of its inspection letters to registered investment advisers, the staff includes a recommendation that the investment adviser maintain information to satisfy the "know your client" requirement prior to making investment recommendations to clients. Collecting and maintaining such information not only enables the investment adviser to fulfill its fiduciary duty to the client, but also protects both the investment adviser and client by memorializing information the investment adviser should know before providing the client with investment recommendations. The amendment would convert this recommendation into a requirement.

Ronak Patel, Director, Inspections and Compliance Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Patel also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to alert registered investment advisers of how to satisfy the "know your client" requirement prior to making investment recommendations to clients; facilitate investment advisers in fulfilling their fiduciary duties to clients; provide protection to both investment advisers and their clients; and remove an unneeded record-keeping option.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES

Approximately 5,255 investment adviser firms are registered or notice filed with the Agency. Of that number, approximately 1,010 are registered investment advisers with a principal place of business in Texas and which would be affected by the proposed amendment. Of those 1,010 that would be affected by the proposed amendment, approximately 99% are small businesses and approximately 97% are micro-businesses.

The Agency estimates that the projected economic impact of the proposed amendment to §116.5 requiring an investment adviser to collect and maintain certain basic information about the clients he or she advises will be the time and costs of mailing a postcard or letter to each client now and once every three years to update the information. The postage cost is currently \$0.29 for each postcard and \$0.44 for each letter. The total anticipated costs to each investment adviser will, of course, depend on the number of clients each has. Small or micro-investment advisers will generally have fewer clients than larger investment advisers and therefore be subject to less costs. The Agency does not an-

icipate that small or micro-investment advisers will need to hire additional personnel or to purchase new furniture or equipment to effectively implement procedures for collecting and maintaining the required information.

In preparing the proposal, the Agency considered several alternative methods for achieving the purposes of the rule amendment. One, the Agency considered exempting small or micro-investment advisers, but determined that all investment advisers, whether large or small, should collect and maintain the subject information before advising their clients. Two, the Agency considered implementing different requirements for small or micro-investment advisers, but decided the anticipated costs for requiring any of the information was the same as requiring all of it, and that all investment advisers, whether large or small, need to have up-to-date basic information on each client before rendering services as an investment adviser. Finally, the Agency considered not adopting the proposed rule amendment, but decided instead that requiring the collection and maintenance of the information would be consistent with other states and with the health, safety and economic welfare of this state.

Mr. Patel also has determined that, except for the costs discussed above, there are no additional anticipated economic costs to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to Kara L. Kennedy, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-13-1.

§116.5. *Minimum Records.*

~~[(a) Investment adviser records. Compliance with the record-keeping requirements of the United States Securities and Exchange Commission, found in 17 Code of Federal Regulations §275.204-2, will satisfy the requirements of this section.]~~

~~(a) [(b)] Records to be made by investment advisers. Persons registered as investment advisers whose principal place of business is located in another state shall maintain records at least in accordance with the minimum record-keeping requirements of that state. Persons registered as investment advisers whose principal place of business is located in Texas shall make and keep current the following minimum records or the equivalent thereof:~~

~~(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.~~

~~(2) General and auxiliary ledgers, (or other comparable records) reflecting asset, liability, reserve capital, income and expense accounts.~~

~~(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction re-~~

ceived by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker, or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to funds, securities, or transactions of any client.

(5) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than investment supervisory clients or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(6) In the case of any client receiving investment supervisory or management service, to the extent that the information is reasonably available to or obtainable by the investment adviser, records showing separately for that client:

(A) the client's current position in any security; and

(B) all securities purchased and sold and the date, amount, and price of each purchase and sale.

(7) In the case of an investment adviser who has custody or possession of the funds or securities of any client:

(A) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and other debits and credits to such accounts;

(B) a separate ledger account for each such client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits;

(C) copies of confirmations of all transactions effected by or for the account of any such client; and

(D) a record for each security in which any client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the location of each such security.

(8) A record of every transaction in a security in which the investment adviser or any investment adviser representative has, or by reason of such transaction acquires any direct or indirect beneficial ownership, except:

(A) transactions effected in any account over which neither the investment adviser nor any investment adviser representative has any direct or indirect influence or control; and

(B) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer, or bank with or through whom the transaction was effected. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(9) For each client, a record listing the client's:

- (A) birth year;
- (B) employment status, including occupation;
- (C) annual income;
- (D) net worth, excluding the value of the client's primary residence;
- (E) investment objectives; and
- (F) risk tolerance.

(10) For accounts in existence on the effective date of this section, the investment adviser must obtain the information required in paragraph (9) of this subsection within one year of January 1, 2012, and thereafter must update this information for each client at intervals not greater than 36 months.

(b) [(e)] Records to be preserved by investment advisers.

(1) Persons registered as investment advisers in Texas shall preserve all records required pursuant to subsection (b) of this section for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place.

(2) Persons registered as investment advisers in Texas shall preserve for a period of not less than three years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place:

(A) all checkbooks, bank statements, cancelled checks, and cash reconciliations of the investment adviser;

(B) all bills or statements (or copies thereof) paid or unpaid, relating to the business of the investment adviser as such;

(C) all trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser;

(D) originals of all written communications received and copies of all written communications sent by such investment adviser relating to:

(i) any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) any receipt, disbursement, or delivery of funds or securities; or

(iii) the placing or execution of any order to purchase or sell any security. Provided, however, that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and that if the investment adviser sends any notice, circular, or other advertisement offering any report, analysis, publication, or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular, or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular, or advertisement a memorandum describing the list and the source thereof;

(E) all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser or copies thereof;

(F) all written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such; and

(G) all complaints received from investment clients, and all documents relating to such complaints.

(3) Persons registered as investment advisers in Texas shall preserve for at least three years after the termination of the enterprise partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor.

(4) If a person ceases to be registered as an investment adviser in Texas, such person shall, for the remainder of the time period specified in this section, continue to preserve the records required in this section.

(5) The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced on microfilm or other photograph and may be maintained and preserved for the required time in that form, provided that such microfilms or other photographs are arranged and indexed in such a manner as to permit the immediate location of any particular document, and that such microfilms or other photographs are at all times available for examination by representatives of the Securities Commissioner together with facilities for immediate, easily readable projection of the microfilm or other photograph and for the production of easily readable facsimile enlargements.

(c) [(e)] The records required to be maintained pursuant to this section may be maintained by any electronic storage media available so long as such records are available for immediate and complete access by representatives of the Securities Commissioner. Any electronic storage media must preserve the records exclusively in a non-rewriteable, non-erasable format; verify automatically the quality and accuracy of the storage media recording process; serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and have the capacity to download indexes and records preserved on electronic storage media to an acceptable medium. In the event that a records retention system commingles records required to be kept under this section with records not required to be kept, representatives of the Securities Commissioner may review all commingled records.

(d) [(e)] The Securities Commissioner has a right to review all records maintained by registered investment advisers regardless of whether such records are required to be maintained under any specific applicable rule provision.

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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Benette L. Zivley

Securities Commissioner

State Securities Board

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7 TAC §116.8

The Texas State Securities Board proposes an amendment to §116.8, concerning fee requirements. The amendment would reduce the Form U-4 filing fees for an individual filing an investment adviser application as a sole proprietor who would also be required to file a Form U-4 application to register as a designated officer under the proposed changes to §116.2. The Board is permitted to accommodate a small business required to register in two or more capacities by reducing the fees to be paid.

Patty Louterback, Director, Registration Division, and Ronak Patel, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Louterback and Mr. Patel also have 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 certain small businesses required to register a sole proprietor in multiple capacities can receive relief for payment of the full fees required under the Texas Securities Act. There will be no adverse effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to Kara L. Kennedy, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

The proposal affects Texas Civil Statutes, Article 581-12, 581-13, 581-18, 581-35, 581-41, and 581-42.

§116.8. *Fee Requirements.*

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

(c) Reduced fees for sole proprietor investment advisers. A person seeking registration in multiple capacities as a sole proprietor investment adviser and as the designated officer of that sole proprietor investment adviser shall pay only the fee required in connection with the original or renewal application for registering as a sole proprietor investment adviser.

(d) [(e)] Fees for concurrent registrations. Notwithstanding the Texas Securities Act, §§35 and 41, a person shall pay only one fee required under those sections to engage in business in this state concurrently for the same person or company as:

- (1) a dealer and an investment adviser; or
- (2) an agent and an investment adviser representative.

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 June 3, 2011.

TRD-201101985

Benette L. Zivley
Securities Commissioner
State Securities Board

Earliest possible date of adoption: July 17, 2011

For further information, please call: (512) 305-8303



CHAPTER 131. GUIDELINES FOR CONFIDENTIALITY OF INFORMATION

7 TAC §131.1

The Texas State Securities Board proposes an amendment to §131.1, concerning information sharing. The amendment would authorize the Commissioner to share confidential information with officials appointed by a court in a proceeding involving a governmental or regulatory authority, including bankruptcy trustees and receivers. While the Act specifies receivers appointed under the Act, the staff's understanding is that any official appointed by and acting on behalf of a state or federal court in a matter involving a governmental or regulatory authority, including a receiver appointed by a federal court at the request of the Securities and Exchange Commission, qualifies as a governmental or regulatory authority. This rule proposal would confirm that understanding.

Joe Rotunda, Director, Enforcement Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Rotunda also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be information can more easily be shared with other entities acting to preserve assets or otherwise assist investors. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to Kara L. Kennedy, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Articles 581-28-1 and 581-28.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 28.B provides that the Board approve governmental and regulatory authorities and associations of governmental and regulatory authorities to which the Commissioner may disclose confidential information at the Commissioner's discretion.

The proposal affects Texas Civil Statutes, Article 581-28.

§131.1. *Information Sharing.*

(a) The Board recognizes [Pursuant to the authority given to the State Securities Board under the Texas Securities Act, §28, the Board, recognizing] the need for cooperative law enforcement among

agencies responsible for the prevention, detection, and prosecution of white collar crime, for the regulation and policing of persons who offer and sell securities, and for the regulation of offerings of securities. Pursuant to the authority given the Board under the Texas Securities Act, §28, the Board [~~and recognizing the policies underlying §28,~~] authorizes the Securities Commissioner in his or her discretion to supply any confidential information in the Commissioner's possession to:

(1) any governmental or regulatory authority, including any bankruptcy trustee, receiver, or other official appointed by a state or federal court in a proceeding involving a governmental or regulatory authority; or

(2) any association of governmental or regulatory authorities [~~or any receiver appointed under the Act, §25-1~~].

(b) (No change.)

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

Filed with the Office of the Secretary of State on June 3, 2011.

TRD-201101987

Benette L. Zivley

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 32. GRANT ADMINISTRATION

The Texas Alcoholic Beverage Commission (commission) proposes the repeal of Chapter 32, §§32.1 - 32.43, relating to Grant Administration.

Chapter 32 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the chapter no longer exist. The commission's receipt and distribution of grant funds are governed by contracts, and internal commission processes related to grants are more appropriately addressed in agency policies or procedures rather than in rules. Current Chapter 32 does not accurately reflect current practice, and the commission has determined that it should be deleted to avoid confusion.

Mindy Carroll, Assistant Director of Education and Prevention, has determined that for each year of the first five years that the proposed repeal will be in effect, there will be no impact on state or local government.

The proposed repeal will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Ms. Carroll has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because outdated and potentially confusing regulations will not be in effect.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission at (512) 206-3480. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on July 7, 2011, in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

SUBCHAPTER A. GENERAL GRANT PROGRAM PROVISIONS

16 TAC §§32.1 - 32.9

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

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

Cross Reference: The proposed repeal affects Alcoholic Beverage Code §5.31.

§32.1. *Applicability.*

§32.2. *Eligible Applicants.*

§32.3. *Definitions.*

§32.4. *Grant Submission Process.*

§32.5. *Selection Process.*

§32.6. *Grant Funding Decisions.*

§32.7. *Grant Acceptance.*

§32.8. *Federal Funding and Adoptions by Reference.*

§32.9. *Grantee Forms.*

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 June 6, 2011.

TRD-201102002

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3443



SUBCHAPTER B. GRANT BUDGET REQUIREMENTS

16 TAC §§32.10 - 32.20

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

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

Cross Reference: The proposed repeal affects Alcoholic Beverage Code §5.31.

§32.10. *Grant Budgets.*

§32.11. *Matching Funds Policy.*

§32.12. *Salaries.*

§32.13. *Professional and Contractual Services.*

§32.14. *Travel and Training.*

§32.15. *Equipment.*

§32.16. *Consumables.*

§32.17. *Rental Equipment and Other.*

§32.18. *Purchase of Evidence.*

§32.19. *Indirect Costs.*

§32.20. *Program Income.*

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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Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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SUBCHAPTER C. CONDITIONS OF GRANT FUNDING

16 TAC §§32.21 - 32.28

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

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

Cross Reference: The proposed repeal affects Alcoholic Beverage Code §5.31.

§32.21. *Grant Conditions.*

§32.22. *Civil Rights Liaison Certification.*

§32.23. *Certification of Drug Testing.*

§32.24. *Confidential Funds Certification.*

§32.25. *Cooperative Working Agreement.*

§32.26. *Interagency Agreements and Subcontracts.*

§32.27. *Resolutions.*

§32.28. *Tax Exempt and Nonprofit Information.*

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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Alan Steen

Administrator

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SUBCHAPTER D. ADMINISTERING GRANTS

16 TAC §§32.29 - 32.41

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

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

Cross Reference: The proposed repeal affects Alcoholic Beverage Code §5.31.

§32.29. *Grant Officials.*

§32.30. *Obligating Funds.*

§32.31. *Retention of Records.*

§32.32. *Expenditure Reports/Request for Reimbursement.*

§32.33. *Grant Adjustments.*

§32.34. *Bonding and Insurance.*

§32.35. *Remedies for Noncompliance.*

§32.36. *Grant Termination.*

§32.37. *Payment of Outstanding Liabilities.*

§32.38. *Violations of Laws.*

§32.39. *Evaluating Project Effectiveness.*

§32.40. *Grantee Reports.*

§32.41. *Grant Management.*

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

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SUBCHAPTER E. PROGRAM MONITORING AND AUDITS

16 TAC §32.42, §32.43

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

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

Cross Reference: The proposed repeal affects Alcoholic Beverage Code §5.31.

§32.42. *Monitoring.*

§32.43. *Audits Not Performed by TABC.*

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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Alan Steen
Administrator
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3443



CHAPTER 33. LICENSING SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.1

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §33.1, relating to Final Conviction or Deferred Adjudication. The proposed amendment clarifies the circumstances in which a deferred adjudication disqualifies an applicant for a permit or license.

Alcoholic Beverage Code §109.532(b)(1) provides that the commission may deny a permit or license application if the commission determines that a previous criminal conviction or deferred adjudication indicates that the applicant is not qualified or suitable for a permit or license. Currently, Commission Rule §33.1 provides that a final conviction or deferred adjudication for certain named offenses may be grounds for cancelling or denying a permit or license unless five years have passed since the applicant's sentence, parole or probation is terminated. The commission seeks to clarify the factors that will be considered in deciding

whether an applicant is disqualified because of a deferred adjudication.

Subsection (a) refers to the applicable provision of the Alcoholic Beverage Code that is being interpreted and implemented.

Subsection (b) establishes the circumstances when a deferred adjudication may disqualify an applicant, based on the underlying offense.

Subsection (c) requires an applicant to provide information to assist the commission in determining whether the applicant is qualified and suitable to hold a permit or license, notwithstanding that the applicant has a deferred adjudication. Subsection (c) also lists factors that the commission will consider in making that determination.

Subsection (d) clarifies that the commission will not consider an applicant's deferred adjudication to be disqualifying if the applicant has successfully completed the terms of the deferred adjudication prior to the time the application is filed.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the section will be in effect, there will be no impact on state or local government.

The rule will have no adverse economic effect on persons required to comply with the rule, including micro-businesses and small businesses. There is no anticipated negative impact on local employment.

Ms. Harrison has determined that for each year of the first five years the section is in effect, the public will benefit because the public health, safety and welfare will continue to be protected from bad actors, while the state's interest in encouraging successful completion of the probationary period associated with a deferred adjudication will be accommodated.

Comments on the proposed amended section may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission at (512) 206-3480. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on July 7, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and 109.532(b)(1), which allows the commission to consider a deferred adjudication in

determining whether an applicant for a permit or license is qualified and suitable.

Cross Reference: The proposed amendment affects Alcoholic Beverage Code §5.31 and §109.532(b)(1).

§33.1. ~~[Final Conviction or] Deferred Adjudication.~~

(a) This section ~~[rule]~~ relates to Alcoholic Beverage Code §§11.46, 25.06, 61.42, 61.43, 69.06, and 109.532 ~~[of the Alcoholic Beverage Code]~~.

(b) ~~In determining whether an [Final conviction or deferred adjudication for the following offenses may indicate that the] applicant is not qualified or is unsuitable [suitable] to hold a permit or license under [the] Alcoholic Beverage Code[-] §109.532(b)(1), or whether an application should [and may] be cancelled or denied the commission may consider whether the person is currently serving deferred adjudication [grounds for cancellation or denial unless five years have elapsed since the termination of a sentence, parole, or probation served by the applicant] for:~~

- (1) any felony offense;
 - (2) any controlled substance offense in the Health and Safety Code Chapter 481;
 - (3) any firearm or deadly weapon [weapons] offense in Penal Code Chapter 46;
 - (4) any prostitution offense in Penal Code Chapter 43;
 - ~~[(5) bookmaking];~~
 - (5) ~~[(6)]~~ any gambling offense in Penal Code Chapter 47 [or gaming];
 - (6) any human trafficking offense in Penal Code Chapter 20A;
 - (7) any fraud offense in Penal Code Chapters 32 or 35;
 - (8) any money laundering offense in Penal Code Chapter 34; or
 - (9) any violation of the Alcoholic Beverage Code.
- ~~[(7) bootlegging];~~

(c) ~~An applicant currently serving [Current permit or license holders who previously qualified for a permit or license and have not been subsequently convicted or received] deferred adjudication for one of the offenses [any offense] listed in subsection (b) of this section shall provide information requested by the commission to allow the commission to determine whether the applicant is qualified or suitable to hold a license or permit. In determining whether an applicant is qualified or suitable to hold a license or permit, the commission shall consider the relationship between the offense and the particular license or permit being sought, taking into account these factors:~~

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation; and
- (6) other evidence presented by the person of the person's present suitability, including letters of recommendation.

(d) If an applicant has completed the conditions of a deferred adjudication prior to filing an application, the commission will not consider the offense for which the deferred adjudication was served in deciding whether the applicant is qualified or suitable to hold [this rule are not disqualified from holding] a permit or license under [the] Alcoholic Beverage Code[-] §109.532(b)(1).

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 June 6, 2011.

TRD-201102007

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 17, 2011

For further information, please call: (512) 206-3443



SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

16 TAC §33.23

The Texas Alcoholic Beverage Commission (commission), proposes an amendment to §33.23, relating to Alcoholic Beverage License and Permit Surcharges. The amendment increases the amount of the surcharges currently paid by permit, license and certificate holders to conform with HB 1 (82nd Legislature, Regular Session).

Alcoholic Beverage Code §5.50 requires the commission to have a rule assessing surcharges on all applicants for an original or renewal certificate, permit or license, in addition to the application fees prescribed in the Code. Currently, §33.23 sets the assessment on an annual basis. However, permits, licenses and certificates are now issued for two-year terms, and the surcharges are assessed accordingly (pursuant to Alcoholic Beverage Code §11.09 and §61.03). The proposed amendment to §33.23 changes the annual surcharge assessment to a biennial assessment. Currently, the surcharge is assessed at twice the amount of the surcharge prescribed in the rule, in recognition of the two-year terms. This change merely updates the rule to conform to current practice and does not represent an increase in the amount of surcharges currently being assessed.

In addition, HB 1 (the General Appropriations Bill in the 82nd Legislature) authorizes the commission to increase the surcharges pursuant to Alcoholic Beverage Code §5.50. Rider 12 of the Alcoholic Beverage Commission section of Article V of HB 1 provides that certain appropriations made to the commission are contingent upon the commission increasing the surcharges by an amount sufficient to raise \$7,000,000 during the 2012-2013 biennium. The proposed amendment increases the various surcharges by an amount sufficient to generate the authorized \$7,000,000.

Subsection (a) contains references to the applicable provisions of the Alcoholic Beverage Code.

Subsection (b) prescribes the new biennial surcharge for each biennial permit, license and certificate.

Subsection (c) prescribes the new biennial surcharge for each temporary permit and license.

Subsection (d) provides that a private club established by a veteran or fraternal organization that holds a Private Club Exemption Certificate Permit is exempt from the requirement to pay a surcharge. This subsection is consistent with Alcoholic Beverage Code §32.11, which provides an exemption to such an organization from the requirement to pay a fee.

Subsection (e) provides the term of the surcharge.

Subsection (f) provides when the surcharge must be paid.

Subsection (g) provides that the penalty for failure to pay a surcharge is the same as the penalty for failure to pay a fee.

Subsection (h) provides that fees and surcharges may not be prorated or refunded.

Shelby Eskew, Director of the Business Services Division, has determined that for the first two years the section will be in effect, the commission will generate sufficient revenue to pay for the amount appropriated by the legislature. The amount of revenue required in years three to five will be evaluated at that time. There will be no impact on local government.

The rule will have an adverse economic effect on persons required to comply with the rule, including micro-businesses and small businesses. The amount of the impact on each business is set forth in the rule itself. The amount of the increase applicable to each permit, license or certificate was calculated to spread the burden among permit, license and certificate holders in the same proportion that each category now carries. The commission has determined that all of the \$7,000,000 authorized by the legislature to be raised by increasing surcharges is necessary to maintain operations at the commission at a level that continues to protect the public health, safety and welfare.

There is no anticipated negative impact on local employment.

Ms. Eskew has determined that for the first two years the section is in effect, the public will benefit because sufficient revenue will be generated to allow the commission to maintain operations at a level that continues to protect the public health, safety and welfare. The amount of revenue required in years three to five will be evaluated at that time, and the surcharge amounts may be adjusted.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission at (512) 206-3480. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on July 7, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221

(voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §5.50, which requires the commission to have a rule assessing surcharges on all applicants for an original or renewal certificate, permit or license, in addition to the application fees prescribed in the Code, and HB 1 (82nd Legislature, Regular Session), which authorizes the commission to increase the amount of surcharges currently being assessed.

The proposed amendments affects Alcoholic Beverage Code §§5.31, 5.50, 11.09, 32.11, and 61.03.

§33.23. *Alcoholic Beverage Permit, License and Certificate [Permit] Surcharges.*

(a) This section relates to Alcoholic Beverage Code §5.50.

(b) ~~[(a)]~~ A biennial ~~[An annual]~~ surcharge on ~~[of all]~~ original or renewal permit, ~~[or]~~ license and certificate fees is ~~[set by the Texas Alcoholic Beverage Code shall be]~~ levied against ~~permit, license and certificate~~ ~~[permit]~~ holders as follows:

Figure: 16 TAC §33.23(b)

~~[Figure: 16 TAC §33.23(a)]~~

(c) A surcharge on temporary permit and license fees is levied against permit and license holders as follows:

Figure: 16 TAC §33.23(c)

~~[(1)]~~ The surcharge shall apply to each brewpub licensed under Texas Alcoholic Beverage Code, Chapter 74, even though one or more are licensed under the same general management or ownership.

(d) ~~[(2)]~~ An organization that holds ~~[which meets the requirements for exemption from]~~ a private club exemption certificate ~~[registration]~~ permit under ~~[the Texas]~~ Alcoholic Beverage Code §32.11~~[-]~~ is ~~[also]~~ exempt from the ~~requirement to pay~~ a surcharge.

(e) Each surcharge imposed by this section is for the term of the original or renewal permit, license or certificate to which the surcharge applies.

(f) ~~[(b)]~~ The permit, license or certificate surcharge is ~~[sur-~~ charges shall be] due and payable at the same time and in the same place and manner as the original or renewal permit, license or certificate~~[-, or license]~~ fee to which the surcharge applies ~~[surecharges apply]~~.

(g) ~~[(c)]~~ Failure or refusal to timely pay the permit, license, or certificate ~~[or permit]~~ surcharge is ~~[shall be]~~ considered the same as failure to timely pay the original or renewal ~~[certificate,]~~ permit, ~~[or]~~ license or certificate fee, and the same penalties ~~[will]~~ apply.

(h) The fees and surcharges for a permit or license may not be prorated or refunded.

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 June 6, 2011.

TRD-201102031

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3443

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16 TAC §33.25

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §33.25, relating to Alcoholic Beverage License and Permit Fees and Surcharges. The amendment deletes those subsections implementing the transition from one-year to two-year terms for permits, licenses and certificates.

Alcoholic Beverage Code §11.09 and §61.03 provide that permits and licenses will generally expire two years from the date of issuance, except for certain temporary and secondary permits and licenses. However, these sections of the Code authorized the commission to transition from one-year to two-year terms in order to maintain a reasonable annual distribution of renewal application review work and fees. Current §33.25 implemented the transition from one-year to two-year terms by prescribing certain expiration dates for specific categories of permits and licenses. That transition was successfully implemented and these provisions in §33.25 are no longer necessary.

Current subsections (b) through (f) are deleted, and the remaining subsections are edited and reorganized.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years the section will be in effect, there will be no impact on state or local government.

The rule will have no adverse economic effect on persons required to comply with the rule, including micro-businesses and small businesses. There is no anticipated negative impact on local employment.

Ms. Harrison has determined that for the first five years the section is in effect, the public will benefit because unnecessary and potentially confusing regulations will not be in effect.

Comments on the proposed section may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission at (512) 206-3480. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on July 7, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

Cross Reference: The proposed amendments affect Alcoholic Beverage Code §§5.31, 11.09 and 61.03.

§33.25. Temporary [Alcoholic Beverage License] and Secondary Permits and Licenses [Permit Fees and Surcharges].

(a) This section relates to Alcoholic Beverage Code §11.09 and §61.03. [rule implements the provisions of §§5.50, 11.09 and 61.03 of the Texas Alcoholic Beverage Code (Code). Section 5.50 authorizes the Texas Alcoholic Beverage Commission (commission) by rule to assess surcharges on all applicants for original or renewal certificate, permit, or license issued by the commission. Sections 11.09 and 61.03 of the Code authorize the commission to issue a license or permit for a two-year term and double the amount of the fees established for each license or permit by the Code or a rule of the commission, and surcharges established in §33.23 of this chapter (relating to Alcoholic Beverage License and Permit Surcharges).]

[(b) Implementation Plan. To maintain a reasonable annual distribution of renewal application review work and permit fees, the commission will implement the two-year licensing schedule based on the type of permit or license type for which an application is submitted.]

[(c) An original or renewal application for a permit or license listed in the following chart, with an issue date before October 1, 2008, will expire one year from the date the license or permit is issued. An original or renewal application for a permit or license listed in the following chart, with an issue date on or after October 1, 2008, will expire two years from the date the license or permit is issued.]
[Figure: 16 TAC §33.25(c)]

[(d) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before January 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after January 1, 2009, will expire two years from the date the license or permit is issued.]
[Figure: 16 TAC §33.25(d)]

[(e) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before September 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after September 1, 2009, will expire two years from the date the license or permit is issued.]
[Figure: 16 TAC §33.25(e)]

[(f) The following permits and licenses are time limited and the fees and surcharges are assessed each time a permit or license is issued.]
[Figure: 16 TAC §33.25(f)]

(b) [(g)] A secondary permit or license which requires the holder to first obtain another permit, including a late hours permit, expires on the same date [as] the primary permit expires. [A temporary permit or license expires on the date indicated on the license or permit or the same date as the primary permit, whichever occurs earlier. The fees for a secondary or temporary permit or license may not be prorated or refunded.]

(c) A temporary permit or license expires on the date indicated on the license or permit or on the same date as the primary permit, whichever occurs earlier.

(d) The fees and surcharges for a secondary or temporary permit or license may not be prorated or refunded.

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 June 6, 2011.

TRD-201102008

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 17, 2011

For further information, please call: (512) 206-3443



CHAPTER 35. ENFORCEMENT

16 TAC §35.32

The Texas Alcoholic Beverage Commission (commission) proposes new §35.32, relating to Reporting a Breach of the Peace. The section establishes criteria for reportable incidents and procedures for reporting them.

Alcoholic Beverage Code §11.61(b)(21) and §61.71(a)(31) require permittees and licensees to promptly report to the commission a breach of the peace occurring on the licensed premises. The commission seeks to minimize doubts that good actors may have about when reports are required, thereby reducing their exposure to risk of noncompliance. The commission also seeks to encourage more reporting from bad actors who may currently hide behind the uncertainty in the Code provisions. It appears that failure to report breaches of the peace can be an indicator that an establishment may have other serious problems.

Subsection (a) contains references to the applicable provisions of the Alcoholic Beverage Code that require prompt reporting of breaches of the peace by permittees and licensees.

Subsection (b) establishes when a report must be filed by providing specific deadlines for reporting various breaches of the peace.

Subsection (c) establishes how a report must be made and allows various means of reporting.

Subsection (d) provides that a permittee or licensee who has previously violated Alcoholic Beverage Code §11.61(b)(21) or §61.71(a)(31) may be required to report in a specific manner, as instructed by the commission.

Subsection (e) establishes what a report must contain.

Subsection (f) describes specific conduct that may constitute a reportable breach of the peace.

Subsection (g) describes when the conduct described in subsection (f) must be reported, and defines certain terms used in the section.

Joel Moreno, Chief of Field Operations, has determined that for each year of the first five years that the section will be in effect, there will be no impact on state or local government.

The rule will have no adverse economic effect on persons required to comply with the rule, including micro-businesses and small businesses, because all permittees and licensees are already required to promptly report breaches of the peace to the commission. Failure to promptly report a breach can subject a permittee or licensee to a range of penalties, up to and including cancellation of the permit or license. While some compliance

costs may be incurred, they are offset by the certainty provided by having the reporting requirements clarified, thereby reducing the risks associated with unintentional or inadvertent failures to report. The commission is also proposing to allow several options for reporting, including electronically, with the expectation that a permittee or licensee will use the most efficient means to report. There is no anticipated negative impact on local employment.

Mr. Moreno has determined that for each year of the first five years the section is in effect, the public will benefit because requirements for reporting breaches of the peace are clarified, the risk of noncompliance for permittees and licensees is diminished, and commission resources will be used more efficiently and effectively to protect public health, safety and welfare.

Comments on the proposed section may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission at (512) 206-3480. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on July 7, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed new section is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

Cross Reference: The proposed new section affects Alcoholic Beverage Code §§5.31, 11.61 and 61.71.

§35.32. Reporting a Breach of the Peace.

(a) This section relates to Alcoholic Beverage Code §11.61(b)(21) and §61.71(a)(31).

(b) Except as provided in this subsection, a permittee or licensee shall report to the commission a breach of the peace on a licensed premise as soon as possible, but not later than three business days after the occurrence. If a shooting, stabbing or murder occurs on the licensed premises, the permittee or licensee shall report the breach of the peace not later than 24 hours from the time of the incident.

(c) Unless the report is required to be made in a specific manner pursuant to subsection (d) of this section, the report required by this section shall be made:

- (1) in person at any commission office;
- (2) by facsimile transmission to the appropriate commission office;

(3) through the commission's website; or

(4) by e-mail to "breachofpeace@tabc.sos.state.tx.us".

(d) The administrator or administrator's designee may require, in writing, that a permittee or licensee make any reports required by this section in a specific manner as instructed, if the permittee or licensee has previously violated Alcoholic Beverage Code §11.61(b)(21) or §61.71(a)(31).

(e) At a minimum, the report required by this section shall include:

(1) the date and time of the report;

(2) the date and time of the incident being reported;

(3) the trade name of the licensed premises where the incident occurred;

(4) the name and physical location of the licensed premises where the incident occurred, including the city (if applicable) and county;

(5) the name of the person filing the report, that person's relationship to the holder of the permit or license, and contact information for that person;

(6) if different from the information given in response to paragraph (5) of this subsection, the name of the person designated by the holder of the permit or license to answer questions from the commission about the incident, that person's relationship to the permit or license holder, and contact information for that person;

(7) a brief description of the incident;

(8) the name of all law enforcement agencies who were called or otherwise appeared in connection with the incident, and the names of the officers involved (if known); and

(9) the names and contact information of any witnesses to the incident (if known).

(f) For purposes of subsection (b) of this section, a reportable "breach of the peace" occurs when a disturbance is created on the licensed premises by a person:

(1) shooting, stabbing or murdering a person;

(2) causing bodily injury to another person;

(3) threatening another person in an offensive manner;

(4) placing another person in imminent danger of serious bodily injury;

(5) discharging a firearm in, or in the direction of, the licensed premises;

(6) damaging or destroying the permittee's or licensee's property; or

(7) fighting with another person.

(g) For purposes of this section:

(1) conduct identified in subsection (f) of this section (other than a shooting, stabbing or murder) creates a "disturbance", and therefore is a reportable breach of the peace, when it:

(A) occurs at a time when the permittee or licensee, or any person allowed by the permittee or licensee, is on the licensed premises; and

(B) interferes with, interrupts, or intrudes upon:

(i) the operation or management of the licensed premises; or

(ii) the conduct of any person present on such premises;

(2) a shooting, stabbing or murder on the licensed premises is always a "disturbance", and therefore is always a reportable breach of the peace;

(3) a "business day" is a day when the Texas Alcoholic Beverage Commission is open for business;

(4) a "licensed premises" is as defined in Alcoholic Beverage Code §11.49;

(5) a "permittee" is as defined in Alcoholic Beverage Code §1.04(11); and

(6) a "licensee" is as defined in Alcoholic Beverage Code §1.04(16).

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 June 6, 2011.

TRD-201102009

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 17, 2011

For further information, please call: (512) 206-3443



CHAPTER 45. MARKETING PRACTICES SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.117

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.117, relating to Gifts and Advertising Specialties. The proposed amendment implements S.B. 890 (82nd Leg., Regular Session), which becomes effective on September 1, 2011 and which requires the commission to adopt rules allowing certain permittees to maintain coil connections for the dispensing of wine.

Alcoholic Beverage Code §102.07 prohibits certain upper- and middle-tier permittees from furnishing any service of value to a retailer and from furnishing to a retail dealer any equipment, fixtures or supplies to be used in dispensing alcoholic beverages. S.B. 890 (82nd Leg., Regular Session) adds §108.042 to the Alcoholic Beverage Code, which requires the commission to adopt rules relaxing the restrictions of §102.07 in order to allow some of the named permittees to clean and maintain coil connections used in the dispensing of wine.

Subsection (a) is amended to include the reference to Alcoholic Beverage Code §108.042.

Subsection (d) is amended to add new paragraph (3), which applies to holders of wholesaler's, general class B wholesaler's, or local class B wholesaler's permits, or their agents, the same provisions as to the dispensing of wine that are applicable to distributors and members of the manufacturing tier as to the dispensing of draft malt beverages under 16 TAC §45.113(e)(3).

Dexter K. Jones, Director of the Compliance and Marketing Practices Division, has determined that for each year of the first five years that the section will be in effect, there will be no impact on state or local government.

The rule will have no adverse economic effect on persons required to comply with the rule, including micro-businesses and small businesses. There is no anticipated negative impact on local employment.

Mr. Jones has determined that for each year of the first five years the section is in effect, the public will benefit because the listed wholesalers will have more incentive to support a more efficient method of dispensing wine, i.e., through by-the-glass pours from wine kegs.

Comments on the proposed section may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission at (512) 206-3480. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on July 7, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §108.042 (effective September 1, 2011), which requires the commission to adopt rules addressing maintenance of coil connections for the dispensing of wine.

Cross Reference: The proposed amendment affects Alcoholic Beverage Code §§5.31, 102.07, and 108.042.

§45.117. *Gifts and Advertising Specialties.*

(a) General.

(1) This section ~~[rule]~~ is enacted pursuant to Alcoholic Beverage Code §§102.07(b), 102.07(d), 108.042 and 109.58 ~~[of the Alcoholic Beverage Code]~~.

(2) This section ~~[rule]~~ applies to buyers, sellers and consumers of liquor.

(b) Gifts to consumers. Manufacturers and wholesalers may furnish gifts to consumers.

(1) The gifts shall be offered consistently with the restrictions contained in Alcoholic Beverage Code §102.07(d) ~~[of the Alcoholic Beverage Code]~~.

(2) The items given may be novelty items of limited value. Such items shall be designed to promote a specific product or brand and may have a utilitarian function in addition to product promotion.

(3) Liquor may be purchased for consumers provided that such beverages are consumed on retail licensed premises in the presence of the purchaser. Such purchases shall not be excessive. All members of the manufacturing and wholesaler tiers participating in promotions authorized by this paragraph must hold an agent's permit or manufacturer's agent's permit.

(4) Manufacturers and wholesalers may, as a social courtesy, provide liquor or other things of value to unlicensed persons who are not employed or affiliated with the holder of a retail license or permit.

(c) Gifts to Retailers. Manufacturers and wholesalers may furnish advertising specialties to retailers.

(1) Advertising specialties are things designed to advertise or promote a specific product or brand. Such items may have a utilitarian function in addition to product promotion.

(2) The total cost of all advertising specialties furnished to a retailer shall not exceed \$101 per brand per calendar year. Dollar limitations may not be pooled to provide a retailer with advertising specialties in excess of the maximum permitted under this subsection.

(d) Service provided to retailer. ~~[Manufacturers and wholesalers may:]~~

(1) ~~Manufactures and wholesalers may service~~ [Service] and repair items furnished to retailers under the provisions of this rule. ~~;~~ ~~and]~~

(2) ~~Manufactures and wholesalers may furnish~~ [Furnish] meeting rooms to retailers for purposes of product promotions. In no event shall anything be furnished to retailers except samples of the manufacturer's or wholesaler's product or food provided as a courtesy in accompaniment to such samples.

(3) The holder of a wholesaler's, general class B wholesaler's, local class B wholesaler's permit, or the permit holder's agent, may furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, and coil cleaning service necessary for the proper delivery and dispensing of wine.

(e) Gifts to Unlicensed Organizations. Manufacturers and wholesalers may donate money, liquor or other things of value to unlicensed civic, religious, or charitable organizations.

(1) Liquor may only be given for consumption in wet areas.

(2) Advertising of events sponsored by organizations receiving donations shall include promotion of the organization sponsor or cause in a manner at least equal to or greater than the advertising of the industry donor.

(3) "Unlicensed" means not having a permit or license authorizing the sale or service of alcoholic beverages.

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 June 6, 2011.
TRD-201102010

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: July 17, 2011
For further information, please call: (512) 206-3443



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 74. CHIROPRACTIC FACILITIES

22 TAC §74.3

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §74.3, concerning Annual Renewal, to make clear that operating a chiropractic facility with an expired certificate of registration constitutes operating a chiropractic facility without a certificate of registration.

The Board is authorized to adopt rules prescribing the standards for the chiropractic facility registration program pursuant to §201.312 of the Chiropractic Act (Texas Occupations Code). Currently, the rule does not make clear that operating a facility with an expired certificate of registration constitutes the operation of a facility without a certificate of registration. It only states that a facility shall not provide services without a current certificate of registration. This amendment will clarify the concept that an expired certificate of registration is the equivalent of no certificate of registration.

Glenn Parker, Executive Director, has determined that, for each year of the first five years that this amendment will be in effect, there will be no additional cost to state or local governments.

Mr. Parker has also determined that, for each year of the first five years that this amendment will be in effect, the public benefit of this amendment will be clear guidelines on whether a facility is considered to be registered with the Board. Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro businesses during the first five years that this amendment will be in effect.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Glenn Parker, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, TX 78701; fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

This amendment is proposed under Texas Occupations Code §201.152, relating to rules, and §201.312, relating to registration of facilities. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.312 authorizes the Board to adopt rules for registering chiropractic facilities.

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

§74.3. Annual Renewal.

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

(f) A facility shall not provide chiropractic services without a current certificate of registration. Operating a facility with an expired

certificate of registration constitutes operating a facility without a certificate of registration.

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

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

Filed with the Office of the Secretary of State on June 3, 2011.

TRD-201102001
Yvette Yarbrough
Board Attorney
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 17, 2011
For further information, please call: (512) 305-6716



CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.3

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §80.3, concerning Requests for Information and Records from Licensees, to clearly state that licensees cannot withhold patient records based on a lack of a letter of protection or similar document.

The Board has received several complaints recently that some licensees are refusing to release patient records until a letter of protection is provided. The proposed amendment to §80.3 makes clear that this is not an acceptable basis for denial and patient records must be released when a proper authorization is received.

Glenn Parker, Executive Director, has determined that, for each year of the first five years that this amendment will be in effect, there will be no additional cost to state or local governments.

Mr. Parker has also determined that, for each year of the first five years that this amendment will be in effect, the public benefit of this amendment will be clear restrictions on withholding an individual's chiropractic records. Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro businesses during the first five years that this amendment will be in effect.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Glenn Parker, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, TX 78701; fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

This amendment is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

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

§80.3. Request for Information and Records from Licensees.

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

(d) Denial of request. If the licensee denies the request under subsection (a) of this section for a copy of chiropractic records or a summary or narrative of the records, either in whole or in part, the li-

censee shall furnish the patient a written statement, signed and dated, stating the reason for the denial. Chiropractic records requested pursuant to subsection (a) of this section may not be withheld based on a past due account for care or treatment previously rendered to the patient or based on the lack of a letter of protection or other similar document.

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

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

Filed with the Office of the Secretary of State on June 3, 2011.

TRD-201101998

Yvette Yarbrough

Board Attorney

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: July 17, 2011

For further information, please call: (512) 305-6716



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.38

Proposed amended §465.38, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10582), 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 June 6, 2011.

TRD-201102017



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. PRELIMINARY RULES SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

31 TAC §675.24

Proposed new §675.24, published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10425), 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 May 27, 2011.

TRD-2011001926



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 253. DEFINITIONS

37 TAC §253.1

Proposed amended §253.1, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10618), 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 June 6, 2011.

TRD-201102018



CHAPTER 255. RULEMAKING PROCEDURES

37 TAC §255.4

Proposed amended §255.4, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10618), 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 June 6, 2011.

TRD-201102019



CHAPTER 259. NEW CONSTRUCTION RULES

SUBCHAPTER B. NEW MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.115

Proposed amended §259.115, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10619), 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 June 6, 2011.

TRD-2011002020



37 TAC §259.122

Proposed amended §259.122, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10619), 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 June 6, 2011.

TRD-201102021



37 TAC §259.167

Proposed amended §259.167, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10619), 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 June 6, 2011.

TRD-201102022



**SUBCHAPTER C. NEW LOCKUP DESIGN,
CONSTRUCTION AND FURNISHING
REQUIREMENTS**

37 TAC §259.216

Proposed amended §259.216, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10620), 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 June 6, 2011.

TRD-2011002023



37 TAC §259.223

Proposed amended §259.223, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10620), 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 June 6, 2011.

TRD-201102024



37 TAC §259.263

Proposed amended §259.263, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10621), 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 June 6, 2011.

TRD-201102025



**SUBCHAPTER D. NEW MEDIUM SECURITY
DESIGN, CONSTRUCTION AND FURNISHING
REQUIREMENTS**

37 TAC §259.313

Proposed amended §259.313, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10621), 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).)

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TRD-201102026



37 TAC §259.318

Proposed amended §259.318, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10621), 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).)

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37 TAC §259.357

Proposed amended §259.357, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10622), 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).)

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CHAPTER 273. HEALTH SERVICES

37 TAC §273.2

Proposed amended §273.2, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10622), 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).)

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TRD-201102029



TITLE 43. TRANSPORTATION

**PART 1. TEXAS DEPARTMENT OF
TRANSPORTATION**

CHAPTER 21. RIGHT OF WAY

**SUBCHAPTER K. CONTROL OF SIGNS
ALONG RURAL ROADS**

43 TAC §21.443

Proposed new §21.443, published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10634), 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).)

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TRD-201102030



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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §354.1121, Definitions; §354.1331, Benefits and Limitations; and §354.1332, Conditions for Participation. The amendments are adopted without changes to the proposed text as published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1777) and will not be republished.

Background and Justification

HHSC is adopting the amendments, in part, to incorporate changes requested by the professional association representing advanced practice nurses. The amended title of the division, as adopted, now encompasses all types of nurse practitioners and clinical nurse specialists and corresponds to the terms used in the Texas Nursing Practice Act and the rules of the Texas Board of Nursing.

HHSC is also adopting the amendments to add needed definitions; remove obsolete or redundant definitions; and amendments to update terms, remove obsolete language, and clarify language. The amendments will reduce confusion for staff and auditors performing utilization review and monitoring for fraud and abuse.

Comments

HHSC did not receive any comments regarding the proposed amendments.

DIVISION 10. DEFINITIONS

1 TAC §354.1121

Legal Authority

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

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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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



DIVISION 24. NURSE PRACTITIONER AND CLINICAL NURSE SPECIALIST SERVICES

1 TAC §354.1331, §354.1332

Legal Authority

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

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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Steve Aragon

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



CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.112, concerning Attendant Compensation Rate Enhancement, in its Reimbursement Rates chapter. The proposed rule is adopted without changes to the proposed text as published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2308) and will not be republished.

Background and Justification

This rule establishes the reimbursement methodology for the Attendant Compensation Rate Enhancement (enhancement program). Under this rule providers may choose to maintain a certain attendant compensation spending level in return for increased attendant compensation reimbursement rates. Providers participating in the enhancement program who fail to meet their spending requirements are subject to a recoupment of all attendant compensation revenues associated with unmet spending goals.

HHSC, under its authority and responsibility to administer and implement rates, is adopting this amendment to:

replace references to the Department of Aging and Disability Services (DADS) Form 2031 with a generic form description;

clarify cost report training requirements for cost reports functioning as attendant compensation reports;

expand the definition of an attendant for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR), Home and Community-based Services (HCS), and Texas Home Living (TxHmL) programs;

add a definition of a driver;

allow direct care workers, direct care trainers and job coaches to count as attendants for all programs (current rule language limits these staff types to the ICF/MR, HCS and TxHmL programs);

lessen long term penalties for providers who fail to meet their spending requirement during a specific time period;

define a new contract as one whose effective date is on or after the first day of the open enrollment period;

clarify that certain rule provisions apply at the ICF/MR, HCS, and TxHmL component code level rather than the contract level; and

describe how the attendant compensation rate component for HCS employment assistance is calculated for providers not participating in the enhancement program.

Comments

The 30-day comment period ended May 16, 2011. During this period, HHSC received no comments regarding the proposed amendments to this rule.

Legal Authority

The amendment is adopted under the Human Resources Code, §32.021, which provides HHSC with the authority to adopt rules necessary to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and the Texas Government Code §531.021(a), which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

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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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.308

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.308, concerning Direct Care Staff Rate Component, in its Reimbursement Rates chapter. The proposed rule is adopted without changes to the proposed text as published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2324) and will not be republished.

Background and Justification

This rule establishes the reimbursement methodology for the Nursing Facility Direct Care Staff Rate Component rate enhancement (enhancement program). Under this rule, nursing facilities may choose to maintain a certain staffing level in return for increased direct care staff reimbursement rates. Facilities participating in the enhancement program who fail to meet their staffing or spending requirements are subject to a recoupment of all direct care staff revenues associated with unmet staffing or spending goals.

HHSC, under its authority and responsibility to administer and implement rates, is adopting the amendment to:

replace references to Department of Aging and Disability Services Form 2031 with a generic form description;

clarify cost report training requirements for cost reports functioning as staffing and compensation reports; and

correct out-of-date rule references.

Comments

The 30-day comment period ended May 16, 2011. During this period, HHSC received no comments regarding the proposed amendments to this rule.

Legal Authority

The amendment is adopted under the Human Resources Code, §32.021, which provides HHSC with the authority to adopt rules necessary to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and the Texas Government Code §531.021(a), which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

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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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.502, Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers; §355.503, Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs; §355.505, Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program; §355.507, Reimbursement Methodology for the Medically Dependent Children Program; §355.513, Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program; and §355.725, Reimbursement Methodology for Professional Services and Requisition Fees for Home and Community-based Services (HCS); and adopts the repeal of §355.508, Reimbursement Methodology for Transition Assistance Services. The amendments and repeal are adopted without changes to the proposal as published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2333) and will not be republished.

Background and Justification

Sections 355.502, 355.503, 355.505, 355.507, 355.508, 355.513, and 355.725 establish the reimbursement methodologies for various home and community-based services (HCBS) waiver programs administered by the Department of Aging and Disability Services (DADS). HHSC, under its authority and responsibility to administer and implement rates, is adopting the amendments to these rules to combine all common services in one section; reflect appropriate service arrays for these various programs; clarify reimbursement methodology descriptions; and standardize language. Additional changes were made to remove unnecessary or obsolete language.

Combining Common Services in One Section.

Many HCBS waiver programs provide common services. Since the service definitions and provider specifications for these common services are the same across these programs, the rates for these services are the same for each program. Currently, HHSC has a single reimbursement methodology for determining rates for common professional services at §355.502, which includes nursing services provided by a registered nurse, nursing services provided by a licensed vocational nurse, physical therapy, occupational therapy, speech/language therapy, behavioral support services, audiology services, and nutrition/dietary services.

Employment services, including supported employment and employment assistance, and transition assistance services are also common to many HCBS waiver programs. Therefore, HHSC is adopting the amendment to §355.502 to include reimbursement methodologies for these services and adopting the repeal of the existing rate methodology rule for transition assistance services at §355.508.

Due to the addition of the reimbursement methodologies for employment services and transition assistance services, HHSC amended the title of §355.502 to "Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers." The amendment to the title of §355.502 resulted in subsequent changes to all reimbursement methodologies that make reference to §355.502.

Reflecting Appropriate Service Arrays.

DADS is revising the Community Living Assistance and Support Services (CLASS) and Home and Community-Based Services (HCS) waiver programs to add employment assistance as an allowable service in these programs. In response to the addition of employment assistance to the CLASS and HCS waiver programs, HHSC amended the reimbursement methodologies for these programs to include methodologies for determining reimbursement rates for this new service.

The Community Based Alternatives (CBA) waiver program provides out-of-home respite services in an Assisted Living/Residential Care (AL/RC) facility. The reimbursement methodology for out-of-home respite in an AL/RC facility is not currently included in the reimbursement methodology at §355.503. HHSC amended the reimbursement methodology for this program to include a methodology for this service.

Dental services and medical supplies requisition fees are currently included in the array of services in the CLASS, HCS, and Deaf Blind with Multiple Disabilities (DBMD) waiver programs and specialized therapies requisition fees are currently included in the array of services in the CLASS waiver program, but the reimbursement methodologies for these programs do not include methodologies for these fees. HHSC amended the reimbursement methodology rules for the HCS, CLASS, and DBMD waiver programs to include methodologies for determining these fees.

Finally, a description of how the pre-enrollment and case management services are determined in the DBMD waiver program was added to the reimbursement methodology at §355.513.

Clarifying Reimbursement Methodology Descriptions.

Clarifications to reimbursement methodology descriptions include clarifications for the following services and programs: the attendant care cost component of the CBA AL/RC rate; out-of-home respite provided in a CBA Adult Foster Care (AFC) home; CBA Emergency Response Services (ERS) and Home Delivered Meals (HDM); and out-of-home respite and in-home respite in the CLASS waiver program.

Attendant Care Cost Component of the CBA AL/RC Rate.

There are six different attendant care cost areas for CBA AL/RC services based upon client need for attendant care (i.e., client level of care). The reimbursement methodology described in §355.503(c)(2)(B) is not clear regarding the use of client need in the calculation of these six different cost areas. HHSC amended the reimbursement methodology rule for the CBA AL/RC waiver program to clarify language regarding the use of client need in the calculation of the attendant care cost component of the CBA AL/RC rate.

Out-of-Home Respite in CBA AFC.

The reimbursement methodology for CBA AFC at §355.503(c)(2)(A) includes out-of-home respite services provided in an AFC home; however, the language does not clearly indicate this. HHSC amended the reimbursement methodology for the CBA waiver program to clearly indicate the

application of this subparagraph to out-of-home respite services provided in an AFC home.

CBA ERS and HDM.

The reimbursement methodologies for CBA ERS and CBA HDM are both included in §355.503(c)(3) under the title "Monthly reimbursement ceilings." While the rate for ERS is a cost ceiling per month, the cost ceiling for HDM is per meal. HHSC amended the reimbursement methodology for the CBA waiver program to separate the reimbursement methodologies for ERS and HDM into two paragraphs and clarify that the HDM cost ceiling is a ceiling per meal.

CLASS Respite Services.

The reimbursement methodology for CLASS respite services at §355.505(c)(4)(B) states the respite care rates are modeled; however, the rate for out-of-home respite services in CLASS is calculated using cost report data, while the rate for in-home respite is calculated using cost report data and then combining the resulting costs per unit of service into an array as described in §355.502. HHSC amended the reimbursement methodology for the CLASS waiver program to codify current practice by deleting the outdated respite services methodology at §355.505(c)(4)(B), and adding the current methodology to §355.505(c)(4)(A).

Standardizing Language.

The reimbursement methodologies and the rates for the HCS and Texas Home Living (TxHmL) waiver programs are identical. HHSC revised §355.725 to apply to both the HCS and TxHmL programs and to change the section name to "Reimbursement Methodology for Common Waiver Services in Home and Community-based Services (HCS) and Texas Home Living (TxHmL)." HHSC also added a new subsection to §355.725 to identify unallowable costs related to requisition fees.

Finally, HHSC updated references to "speech pathology" to the current name in §355.502 of "speech/language therapy" whenever references to "speech pathology" occur in Subchapter E or §355.725.

Comments

The 30-day comment period ended May 16, 2011. During this period, HHSC received no comments regarding the proposal.

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §§355.502, 355.503, 355.505, 355.507, 355.513

Legal Authority

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

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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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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1 TAC §355.508

Legal Authority

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

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 F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.725

Legal Authority

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

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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1 TAC §355.701, §355.702

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §355.701, concerning definitions and general specifications, and §355.702, concerning method of cost determination, without changes to the proposed text as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2075) and will not be republished.

Background and Justification

The repeals delete redundant and obsolete rules previously incorporated into the rules in Chapter 355, Reimbursement Rates, Subchapter A, Cost Determination Process. Providers of programs serving persons with mental illness and mental retardation that submit cost reports will use the cost determination process rules in Chapter 355, Subchapter A as guidance regarding the reporting of cost.

Comments

The 30-day comment period ended May 1, 2011. During this period, HHSC did not receive any comments regarding the proposed repealed rules.

Legal Authority

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

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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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.723, Reimbursement Methodology for Home and Community-based Services (HCS), and the repeal of §355.791, Reimbursement Methodology for the Texas Home Living (TxHmL) Program. The amendment and repeal are adopted without changes to the proposal as published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2345) and will not be republished.

Background and Justification

HHSC is adopting the amendment to §355.723 to add the TxHmL program into this rule. Effective September 1, 2009, the rates for HCS and TxHmL are the same for the same services in both programs. Before that date, the rates were not the same for the same services. Because the rates are now the same, a single reimbursement methodology is needed to determine the rates for both programs.

HHSC is adopting the repeal of §355.791 because the rule is no longer necessary now that the reimbursement methodology for TxHmL is included in §355.723.

In addition, two subparagraphs were added to §355.723(d)(5) to reflect two services, employment assistance and dietary, provided in these programs that are not reflected in the current rule.

Comments

The 30-day comment period ended May 16, 2011. During this period, HHSC received no comments regarding the proposed amendment or repeal.

1 TAC §355.723

Legal Authority

The amendment is adopted under the Texas Human Resources Code, §32.021, which provides HHSC with the authority to adopt rules necessary to administer the federal medical assistance (Medicaid) program in Texas; the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and the Texas Government Code §531.021(a), which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

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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Chief Counsel
Texas Health and Human Services Commission
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1 TAC §355.791

Legal Authority

The repeal is adopted under the Texas Human Resources Code, §32.021, which provides HHSC with the authority to adopt rules necessary to administer the federal medical assistance (Medicaid) program in Texas; the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and the Texas Government Code §531.021(a), which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

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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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



SUBCHAPTER M. MISCELLANEOUS MEDICAID PROGRAMS DIVISION 3. MEDICAID TARGETED CASE MANAGEMENT PROGRAM

1 TAC §355.9041

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §355.9041, Reimbursement for Services, without changes to the proposal as published in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1939) and will not be republished.

Background and Justification

The repeal of this rule is adopted 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 applied only to services delivered by DFPS employees. The repeal deletes an obsolete rule for a Medicaid service that is no longer in effect.

Comments

HHSC received no comments regarding adoption of the repeal.

Legal Authority

The repeal is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Texas 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.

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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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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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) adopts amendments to §40.3, concerning Herd Status Plans for Cervidae, without changes to the proposed text as published in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1940) and will not be republished.

The purpose of the amendment is to assess a fee when Commission personnel provide the service of verifying the annual inventory as required by the Chronic Wasting Disease (CWD) Monitoring Program.

The Commission provides a voluntary herd monitored status program for species that are susceptible to CWD. Currently, all breeders of white tail 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, the Commission not only undercuts the competitiveness of those private accredited veterinarians, but the Commission performs a task that costs the agency an uncompensated expense which is difficult to provide in these dire economic times.

No comments were received regarding adoption of the rule.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Section 161.060 states that "[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 chronic wasting disease 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 requirements 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, under §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. That is under §161.002.

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.

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Gene Snelson

General Counsel

Texas Animal Health Commission

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



CHAPTER 49. EQUINE

4 TAC §49.5

The Texas Animal Health Commission (Commission) adopts amendments to §49.5, concerning Piroplasmosis: Identification of Infected Equine, without changes to the proposed text as published in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1941) and will not be republished. Section 49.5 changes the name from "Piroplasmosis: Identification of Infected Equine" to "Piroplasmosis: Testing, Identification of Infected Equine".

The purpose of the amendments is to define an official Piroplasmosis test and to require a standardized test form for Piroplasmosis submission. The amendments are also for the purpose of restricting positive animals and adding a test requirement for equine entering a racetrack facility.

In October 2009, equine piroplasmosis was disclosed as having infected horses 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 on 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 invoked 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 piroplasmosis test in order to participate. This requirement is intended to ensure that the positive animals are disclosed as well as to protect those animals which participate.

No comments were received regarding adoption of the rule.

STATUTORY AUTHORITY

The amendments are adopted 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 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 may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. 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.

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 June 3, 2011.

TRD-201101989

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: June 23, 2011

Proposal publication date: March 25, 2011

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



CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.3

The Texas Animal Health Commission (Commission) adopts amendments to §51.3, concerning Exceptions, without changes to the proposed text as published in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1943) and will not be republished.

The purpose of the amendment is to clarify existing entry requirements for equine entering Texas from out of state on an equine passport.

The Commission adds a term 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.

No comments were received regarding adoption of the rule.

STATUTORY AUTHORITY

The amendments are adopted 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 may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. 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, bison, domestic fowl, or exotic fowl.

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 June 3, 2011.

TRD-201101990

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: June 23, 2011

Proposal publication date: March 25, 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) adopts amendments to §54.4, concerning Registration Fee, without changes to the proposed text as published in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1944) and will not be republished.

The purpose of the amendments is to change the fee schedule for participants in the 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 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.

One comment was received from the Texas Poultry Federation in support of the rule amendments. No changes were made regarding the comment.

STATUTORY AUTHORITY

The amendments are adopted 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 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.

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 June 3, 2011.

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Gene Snelson
General Counsel
Texas Animal Health Commission

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



TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION

7 TAC §101.5, §101.6

The State Securities Board adopts amendments to §101.5, concerning charges for copies of public records, and §101.6, concerning historically underutilized business program ("HUB"), without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11451).

Section 101.5 reflects the new certification fee of \$15 and §101.6 correctly identifies the agency that establishes HUB rules.

Persons requesting copies will be apprised of the corresponding charges and cross-references contained in the Board's rules will be accurate.

A comment was received from the Financial Services Institute urging adoption of the proposed amendments. The Board agrees and has adopted the proposal without change.

The amendments are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendments affect Texas Civil Statutes, Articles 581-11, 581-30, and 581-35.B(3), and Texas Government Code §2161.003.

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 June 1, 2011.

TRD-201101965

Benette L. Zivley

Securities Commissioner

State Securities Board

Effective date: June 21, 2011

Proposal publication date: December 24, 2010

For further information, please call: (512) 305-8303



CHAPTER 104. PROCEDURE FOR REVIEW OF APPLICATIONS

7 TAC §104.6

The State Securities Board adopts an amendment to §104.6, concerning exceeding the time periods, without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11452).

The agency practice of granting registration authorizations instead of issuing printed permits in certain circumstances will be reflected.

The rule reflects agency practice.

A comment was received from the Financial Services Institute urging adoption of the proposed amendment. The Board agrees and has adopted the proposal without change.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-7 and 581-10, and Texas Government Code, §2005.003.

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 June 1, 2011.

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Benette L. Zivley

Securities Commissioner

State Securities Board

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Proposal publication date: December 24, 2010

For further information, please call: (512) 305-8303



CHAPTER 107. TERMINOLOGY

7 TAC §107.2

The State Securities Board adopts an amendment to §107.2, concerning definitions, without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11452).

Providing uniform definitions in this chapter that are used in other Board rules facilitates coordination of Board rules with the federal definitions referenced, including changes made by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("Dodd-Frank Act"), §413(a).

Defined terms used throughout the Board's rules will be consistent.

A comment was received from the Financial Services Institute urging adoption of the proposed amendment. The Board agrees and has adopted the proposal without change.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters

within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-5, 581-7, 581-12, 581-12-1, 581-13, 581-15, 581-17 through 581-19, and 581-25.

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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Benette L. Zivley

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.4, §109.5

The State Securities Board adopts amendments to §109.4, concerning securities registration exemption for sales to financial institutions and certain institutional investors, and §109.5, concerning dealer registration exemption for sales to financial institutions and certain institutional investors, without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11453).

The cross-reference to an SEC definition is replaced with an equivalent provision in the new "institutional accredited investor" definition that is being simultaneously added to §107.2.

The rules utilize a uniform definition that can be easily updated to coordinate with changes to the federal provision.

A comment was received from the Financial Services Institute urging adoption of the proposed amendments. The Board agrees and has adopted the proposal without change.

The amendments are adopted under Texas Civil Statutes, Articles 581-5.T, 581-12.C, and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendments affect Texas Civil Statutes, Articles 581-5, 581-7, 581-12, 581-12-1, 581-18, and 581-19.

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 June 1, 2011.

TRD-201101968

Benette L. Zivley
Securities Commissioner
State Securities Board
Effective date: June 21, 2011
Proposal publication date: December 24, 2010
For further information, please call: (512) 305-8303



7 TAC §109.13

The State Securities Board adopts an amendment to §109.13, concerning limited offering exemptions, without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11454).

The Texas Uniform Limited Offering Exemption ("ULO"), contained in subsection (k), incorporates definitions being simultaneously added to §107.2; eliminates an unnecessary filing; and mandates the use of the EFD System for electronic filing when it becomes available. Additionally, the Intrastate Limited Offering Exemption ("ILO"), contained in subsection (l), utilizes the definition for "accredited investor" used in SEC Regulation D offerings and simultaneously added to §107.2.

The rule avoids confusion by using a uniform definition and facilitates the electronic filing of Form D.

A comment was received from the Financial Services Institute urging adoption of the proposed amendment. The Board agrees and has adopted the proposal without change.

The amendment is adopted under Texas Civil Statutes, Articles 581-5.T and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-5, 581-7, and 581-12.

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 June 1, 2011.

TRD-201101969
Benette L. Zivley
Securities Commissioner
State Securities Board
Effective date: June 21, 2011
Proposal publication date: December 24, 2010
For further information, please call: (512) 305-8303



CHAPTER 114. FEDERAL COVERED SECURITIES

7 TAC §114.4

The State Securities Board adopts an amendment to §114.4, concerning filings and fees, without changes to the proposed text

as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11456).

The filing requirements for federal covered securities issued pursuant to Securities and Exchange Commission ("SEC") Regulation D, Rule 506, are updated to eliminate an unnecessary filing and mandate the use of the EFD system for filing and payment of fees when that system becomes available.

The filing of an unnecessary form is eliminated and a streamlined notice filing process that coordinates with the federal filing requirements for Rule 506 filings is provided.

A comment was received from the Financial Services Institute urging adoption of the proposed amendment. The Board agrees and has adopted the proposal without change.

The amendment is adopted under Texas Civil Statutes, Articles 581-5.T and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-5, 581-7, and 581-8.

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 June 1, 2011.

TRD-201101970
Benette L. Zivley
Securities Commissioner
State Securities Board
Effective date: June 21, 2011
Proposal publication date: December 24, 2010
For further information, please call: (512) 305-8303



CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.16, §139.19

The State Securities Board adopts amendments to §139.16, concerning sales to individual accredited investors, and §139.19, concerning accredited investor exemption. Section 139.16 is adopted without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11459) and will not be republished. Section 139.19 is adopted with a change to the proposed text. The change to §139.19 corrects a typographical error that identified Chapter 139 as the chapter relating to Administrative Guidelines for Regulation of Offers instead of Chapter 137.

The rules cross-reference the new individual accredited investor definition added to §107.2.

Confusion will be avoided by referencing a uniform definition for "individual accredited investor" that coordinates with certain federal exemptions that also use that terminology.

A comment was received from the Financial Services Institute urging adoption of the proposed amendments. The Board agrees and has adopted the proposal.

The amendments are adopted under Texas Civil Statutes, Articles 581-5.T and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendments affect Texas Civil Statutes, Article 581-7.

§139.19. Accredited Investor Exemption.

Any offer or sale of a security by an issuer in a transaction that meets the requirements of this section is exempted from the securities registration requirements of the Texas Securities Act and exempted from the filing requirements contained in the Texas Securities Act, §22.A, and Chapter 137 of this title (relating to Administrative Guidelines for Regulation of Offers).

(1) Who may purchase. Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors. "Accredited investor" is defined in §107.2 of this title (relating to Definitions).

(2) Unavailable for certain issuers. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(3) Investment intent; resales. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under the Texas Securities Act, §7, or to an accredited investor pursuant to an exemption available under the Texas Securities Act or Board rules.

(4) Disqualifications.

(A) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

(i) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(ii) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(iii) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(iv) is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(B) Subparagraph (A) of this paragraph shall not apply if:

(i) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

(ii) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(iii) the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph.

(5) General announcement.

(A) A general announcement of the proposed offering may be made by any means.

(B) The general announcement shall include only the following information, unless additional information is specifically permitted by the Securities Commissioner:

(i) the name, address, and telephone number of the issuer of the securities;

(ii) the name, a brief description, and price (if known) of any security to be issued;

(iii) a brief description of the business of the issuer in 25 words or less;

(iv) the type, number, and aggregate amount of securities being offered;

(v) the name, address, and telephone number of the person to contact for additional information; and

(vi) a statement that:

(I) sales will only be made to accredited investors;

(II) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(III) the securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(6) Provision of additional information. The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (5) of this section, if such information:

(A) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(B) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(7) Telephone solicitation. No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(8) Loss of exemption. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this section.

(9) Filing. The issuer shall file with the Securities Commissioner a notice of transaction on the Model Accredited Investor Exemption Uniform Notice of Transaction form, a consent to service of process, and a copy of the general announcement within 15 days after the first sale in this state.

(10) Dealer and agent registration. Although the issuer is not required to register as a dealer to conduct sales pursuant to this section, third parties must comply with the dealer and agent registration requirements of the Texas Securities Act and Board rules. For the purposes of this section, the term "issuer" includes any director, officer, or employee of the issuer provided all the following conditions are satisfied:

(A) the director, officer, or employee was not hired for the purpose of offering or selling such securities;

(B) the director's, officer's, or employee's activity involving the offer and sale of such securities is strictly incidental to his or her bona fide primary non-securities related work duties; and

(C) the director's, officer's, or employee's compensation is based solely on the performance of other such duties, i.e., the director, officer, or employee does not receive any compensation for offering for sale, selling, or otherwise aiding in the sale of securities.

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 June 1, 2011.

TRD-201101971

Benette L. Zivley

Securities Commissioner

State Securities Board

Effective date: June 21, 2011

Proposal publication date: December 24, 2010

For further information, please call: (512) 305-8303



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to §1.23, concerning the State of Texas Low Income Housing Plan and Annual Report (SLIHP), with changes to the text as published in the December

31, 2010, issue of the *Texas Register* (35 TexReg 11779). The section adopts by reference the annual 2011 State of Texas Low Income Housing Plan and Annual Report.

The purpose of the SLIHP is to serve as a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The document reviews the Department's programs, current and future policies, resource allocation plan to meet state housing needs, and reports on 2010 performance. The Department is required to submit the SLIHP annually to its Board of Directors in accordance with §2306.072 of the Texas Government Code.

The public comment period was from January 10, 2011 through February 8, 2011. The Department received no comments on the proposed amendments. Staff recommended one additional amendment to correct the Housing Resource Center phone number.

The TDHCA Board of Directors approved the final 2011 SLIHP at the March 3, 2011 board meeting. The 2011 SLIHP will become effective 20 days after being filed with the Office of the Secretary of State.

The amendments are adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).

The Texas Department of Housing and Community Affairs (the "Department") adopts by reference the 2011 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2011 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2011 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3800.

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 June 2, 2011.

TRD-201101977

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Effective date: June 22, 2011

Proposal publication date: December 31, 2010

For further information, please call: (512) 475-3916



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING EARLY CHILDHOOD EDUCATION PROGRAMS

19 TAC §102.1002

The Texas Education Agency (TEA) adopts an amendment to §102.1002, concerning the prekindergarten early start grant program. The amendment is adopted with changes to the proposed text as published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10795). The section establishes procedures for the administration of grant awards for prekindergarten programs. The adopted amendment revises the administration procedures.

The Texas Education Code (TEC), Chapter 29, Subchapter E, establishes a grant program that provides funding to districts interested in improving or expanding prekindergarten programs. The TEC, §29.155(e), authorizes the commissioner to adopt rules to administer the prekindergarten grant award program. Through 19 TAC §102.1002, Prekindergarten Early Start Grant Program, adopted to be effective April 2, 2009, the commissioner exercised rulemaking authority to establish procedures for the program's administration.

The adopted amendment to 19 TAC §102.1002 revises procedures for the prekindergarten grant award program by updating provisions relating to definitions, including changes to the definitions for Tier 1 and Tier 2 grantees and deletion of the Tier 3 grantee definition; eligibility criteria; funding allocations and continuation funding, including removal of Tier 3 funding; exemptions; and technical assistance. The adopted revisions will be implemented beginning with the 2011-2012 school year.

The following technical corrections were made at adoption.

To remove redundancy, subsection (e)(1) and (2) were modified to remove the phrase "as determined annually in the grant application" since subsection (e) already specifies that funding allocation methods are determined annually by the commissioner in the grant application.

For clarity and consistency throughout the rule, subsection (i) was modified to substitute the phrase "subsequent funding" with "continuation funding."

The adopted amendment updates procedures for school districts and open-enrollment charter schools to follow to apply for initial and continuation funding under the Prekindergarten Early Start (PKES) Grant Program. Grantees must continue to agree to submit all information, application materials, and reports required by the TEA. The adopted amendment has no new locally maintained paperwork requirements.

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

The public comment period on the proposal began December 10, 2010, and ended January 10, 2011. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 102, Educational Programs, Subchapter AA, Commissioner's Rules Concerning Early Childhood Education Programs, §102.1002, Prekindergarten Early Start Grant Program.

Comment: An administrator and several prekindergarten teachers from Elkhart Independent School District (ISD) expressed concern that the district would not be eligible to apply for funds when its current grant cycle ends on August 31, 2012. The commenters noted that the district's Grade 3 assessment scores were above the state average.

Agency Response: The agency provides the following clarification. Subsection (e)(1)(B) states that if funds remain after awards are made to qualifying district applicants with substantially below average Grade 3 assessment scores (three-year district averaged), qualifying district applicants with at or above state average Grade 3 assessment scores (three-year district averaged) may be awarded PKES funds.

Comment: Newcastle ISD and an administrator from Arlington ISD expressed concern that the proposed amendment would change their current and continuation funding for the PKES Cycle 1 Grant.

Agency Response: The agency disagrees. The amendment to the commissioner's rule for the PKES Grant Program will not change existing continuation grants. Although, all PKES grant funding is dependent on legislative appropriation.

Comment: An administrator from Harlandale ISD expressed concern that the rule did not allow for increased funding for continuation grants so that districts could serve increased numbers of prekindergarten students.

Agency Response: The comment addresses an issue outside the scope of the current rule proposal. The commissioner's rule does not establish levels of continuation funding. Subsection (e) specifies that funding allocation methods are determined in the grant application. However, all PKES grant funding is dependent on legislative appropriation.

Comment: An administrator from Chapel Hill ISD expressed concern that the rule would not allow districts to continue funding full-day prekindergarten.

Agency Response: The agency disagrees. Subsection (f)(1) allows for funds to be expended for the operation of a full-day prekindergarten program. No changes to this subsection were included in the amendment. However, all PKES grant funding is dependent on legislative appropriation.

Comment: An administrator from Austin ISD expressed appreciation for the positive changes to the rule. The administrator also expressed concern that the rule continues to base the PKES grant on the Grade 3 assessment instrument, which creates a potential "yo-yo effect" on schools and the students they serve.

Agency Response: The agency provides the following clarification. The TEC, §29.155, Kindergarten and Prekindergarten Grants, states that in awarding grants, priority shall be given to districts in which the level of performance of students on the assessment instruments administered in Grade 3 is substantially below the state average.

The amendment is adopted under the TEC, §29.155, which authorizes the commissioner to adopt rules to administer kindergarten and prekindergarten grants.

The amendment implements the TEC, §§29.1533, 29.155, 29.158, and 29.161.

§102.1002. *Prekindergarten Early Start Grant Program.*

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

(1) Eligible student--A child is eligible for enrollment in a prekindergarten class under this section if the child is at least three years of age and meets eligibility criteria consistent with the Texas Education Code (TEC), §29.153.

(2) Licensed child care--Child care that meets the requirements adopted by the Texas Department of Family and Protective Services under the Human Resources Code, §42.002(3).

(3) Nonprofit--An organization that meets the requirements of the United States Code, Title 26, Subtitle A, Chapter 1, Subchapter F, Part I, Section 501(a).

(4) Partner--A non-public school organization collaborating with a public school to provide an educational component to eligible prekindergarten children.

(5) Prekindergarten Early Start Grant Program--A program established in accordance with the TEC, §29.155, to administer grant funds to implement and expand prekindergarten programs.

(6) Prekindergarten site--A public or non-public school classroom where teachers work with three- and four-year-old children in a prekindergarten school readiness program.

(7) Proven school readiness components--The components of proven school readiness are:

(A) a high-quality, developmentally appropriate, and rigorous curriculum, based on the Texas Prekindergarten Guidelines;

(B) continuous monitoring of student progress in the classroom; and

(C) professional development, including mentoring, to promote student achievement.

(8) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

(9) School readiness certification system (SRCS)--In accordance with the TEC, §29.161, the school readiness certification system is a valid, research-based automated system provided by the State Center for Early Childhood Development through which an early childhood education program submits an application demonstrating the program's record of cognitive, social, and emotional development of young children to be certified as a school ready program.

(10) School readiness integration--In accordance with the TEC, §29.158, school readiness integration refers to cooperative strategies to share resources across public and non-public program delivery organizations in a community or communities that may include, but are not limited to:

(A) sharing certified or highly qualified teachers so that every child in each targeted classroom receives a minimum of three hours daily of high-quality skill development consistent with developing children's social and emotional well-being;

(B) developing a comprehensive instructional framework, based on the Texas Prekindergarten Guidelines, consisting of common performance goals that encompass the unique characteristics of each individual organization responsible for preparing young children for school success;

(C) sharing physical space if one organization lacks capacity while another has available capacity;

(D) conducting joint professional development programs that focus on proven school readiness components, including the Texas Prekindergarten Guidelines; and

(E) adopting similar approaches to student progress monitoring to inform classroom instruction.

(11) School readiness integration partnership--A collaboration among public prekindergarten programs and local workforce de-

velopment boards, Head Start providers, college or university early childhood programs, and/or providers of private for-profit or nonprofit licensed child care services that provides a school readiness component to eligible prekindergarten students.

(12) School ready or school readiness--A term that refers to a child being able to function competently in a school environment in the areas of early language and literacy, mathematics, and social skills as objectively measured by state-approved assessment instruments.

(13) Shared services arrangement (SSA)--An agreement between two or more school districts and/or education service centers (ESCs) that provides services for entities involved.

(14) State Center for Early Childhood Development (SCECD)--The state center for early childhood education research and training for early childhood teachers and caregivers administered by The University of Texas Health Science Center at Houston.

(15) Texas Prekindergarten Guidelines--Guidelines approved by the commissioner of education that offer detailed descriptions of expected behaviors across multiple skill domains that should be observed in four- to five-year-old children by the end of their prekindergarten experience. The guidelines are to prepare prekindergarten children to master the skills and concepts in each subject area specified in §74.1 of this title (relating to Essential Knowledge and Skills) in the kindergarten Texas Essential Knowledge and Skills.

(16) Tier 1 grantee--An applicant not currently eligible to receive funds under Tier 2 eligibility criteria.

(17) Tier 2 grantee--An applicant that participated as a Tier 2 grantee in the Prekindergarten Early Start Grant Program in school years 2009-2010 and 2010-2011 that is eligible to receive continuation funding.

(b) Eligibility. Eligible applicants include school districts, open-enrollment charter schools, and ESCs operating as the fiscal agent of an SSA. An applicant may apply for Prekindergarten Early Start Grant Program funds if the applicant meets the criteria for a grantee as defined in subsection (a)(16) or (17) of this section and:

(1) establishes a school readiness integration partnership;

(2) demonstrates how the applicant will measure student progress based on proven school readiness components and the SRCS in accordance with TEC, §29.161; and

(3) demonstrates a commitment to adopt a kindergarten reading diagnostic assessment instrument compatible with the requirements for submission of kindergarten data to the SRCS.

(c) Application and grant award.

(1) An eligible applicant must submit a Prekindergarten Early Start Grant Program application in accordance with the instructions provided by the Texas Education Agency (TEA).

(2) An applicant must document in the grant application its locally adopted procedures for:

(A) determining which eligible students will participate in the program;

(B) implementing a strategic plan encouraging eligible students to attend the program; and

(C) sustaining the level of program quality and services following the term of the grant period.

(3) Each applicant shall provide evidence that before establishing a new prekindergarten program, the school district considered

the possibility of sharing use of an existing Head Start or other licensed child care prekindergarten site as a prekindergarten site.

(d) Notification. The TEA will notify each applicant in writing of its selection or non-selection for funding. In the case of an application selected for funding, notification to the grantee will include the contractual conditions which the grantee must accept in accordance with state law.

(e) Funding. Funding allocations may take into account the percentage of educationally disadvantaged students served in the district, in addition to other funding allocation methods as determined by the commissioner annually in the grant application. Contingent upon adequate appropriations, distribution of funds will be according to the following funding structure.

(1) Tier 1 funding. The highest percentage of available funding will be proportionately awarded to Tier 1 grantees. Funding will be provided for a period not to exceed five years from year one of grant application approval and will be based on annual accomplishment of grant objectives and requirements set forth in the application in subsequent years of the five-year cycle.

(A) Grants will be awarded first to Tier 1 applicants whose average student performance over the last three consecutive years on the Grade 3 assessment instruments administered under the TEC, §39.023, is substantially below state average and whose application score meets a minimum score as defined in the grant application.

(B) Any funds remaining after all grants for Tier 1 applicants meeting criteria defined in subparagraph (A) of this paragraph have been awarded may be awarded to Tier 1 applicants whose average student performance over the last three consecutive years on the Grade 3 assessment instruments administered under the TEC, §39.023, is at or above the state average and whose application score meets a minimum score as defined in the grant application.

(2) Tier 2 funding. A percentage of available funding will be awarded to Tier 2 grantees on a continuation basis. Continuation funding will be provided for a period not to exceed three years or through the 2011-2012 school year.

(f) Allowable expenditures. Allowable expenditures include, but are not limited to, the following:

(1) expenditures related to the continuation of existing full-day prekindergarten programs;

(2) personnel costs related to the teaching personnel needed to expand prekindergarten programs to meet the requirements of at least six hours of instruction by a certified teacher each day;

(3) curriculum materials based on scientific research that are consistent with the Texas Prekindergarten Guidelines and designed to improve the school readiness of preschool children;

(4) equipment, including computers and other technology;

(5) leases for space for prekindergarten programs;

(6) costs associated with developing plans for and entering into integrated school readiness partnerships, including costs associated with infrastructure and administration of the program and partnership;

(7) training activities on proven school readiness components conducted by the SCECD or another provider;

(8) costs associated with the grantee's participation in the SRCS; and

(9) indirect costs.

(g) Unallowable expenditures. Grant funds may not be expended on the following:

(1) portable buildings;

(2) construction of classroom space;

(3) renovation or remodeling of existing space; or

(4) expenditures related to students who are not eligible for the program.

(h) Conditions of operation.

(1) Each grantee must agree to submit all information requested by the TEA through periodic activity/progress reports, a final evaluation report, and other activities related to the evaluation of the program. Reports must be submitted in the prescribed time and must contain all requested information in the prescribed format. These reports will be used by the TEA to evaluate the implementation and progress of grant-funded programs and to determine if modifications or adjustments to the program are necessary.

(2) Each grantee must provide a prekindergarten program designed to develop children's school readiness that is aligned with the Texas Prekindergarten Guidelines.

(3) Each grantee must collaborate in a school readiness integration partnership as established in its grant application. In coordinating school readiness services under this section and in making any related decision to contract with partners such as local workforce development boards, Head Start and Early Head Start providers, licensed child care providers, or other licensed private for-profit or nonprofit child care services providers, a school district shall give preference to entities willing to commit through mutual agreement to implement proven school readiness components that are aligned with the Texas Prekindergarten Guidelines, including participation in:

(A) the SRCS in accordance with the TEC, §29.161;

(B) a nationally recognized accrediting organization approved by the Texas Workforce Commission and the Texas Department of Family and Protective Services; or

(C) the Texas Rising Star Provider certification program administered by the Texas Workforce Commission.

(4) Each grantee must develop and implement, throughout the duration of the grant period, a sustainability plan to continue the quality and level of services of the program after the grant period ends. The sustainability plan must include continuation of the school readiness integration plan and participation in the SRCS.

(i) Continuation funding. All continuation funding will be awarded according to the tier funding structure described in subsection (e) of this section. To receive continuation funding for the Prekindergarten Early Start Grant Program, all grantees must reapply for funding each year of the grant cycle and meet all applicable performance standards included in the prior year's grant agreement. A Tier 2 grantee applying for funding in year three must present valid, research-based empirical data as evidence that the grantee has implemented a prekindergarten program that includes proven school readiness components.

(j) Exemptions.

(1) The requirement in subsection (h)(3) of this section for a school readiness integration partnership may be exempted if Head Start and/or licensed child care programs required for school readiness integration planning are unavailable in a local community. A school district must provide proof of inability to enter into a school readiness integration partnership by submitting an Exemption Request form in

the grant application signed by the superintendent or his/her designee, including a statement signed by the authorized member of the school district's board of trustees certifying inability to submit the required school readiness integration plan based upon unavailability of eligible entities and programs with which to coordinate. An open-enrollment charter school board may also provide a statement certifying inability to enter into a school readiness integration plan based on limitations of the approved charter.

(2) All requests for exemptions from program requirements must be submitted as part of the application.

(3) A Tier 2 grantee may request an exemption from the requirement in subsection (b)(2) of this section to participate in the SRCS if the Tier 2 grantee was not using a Kindergarten reading diagnostic instrument compatible with the SRCS by April 2, 2009, the original adoption date of this section. The grantee will be required to establish a policy for providing another source of valid and reliable data to demonstrate program effectiveness. Approval of a request for an exemption from the requirement to participate in the SRCS will also apply to the condition of operation specified in subsection (h)(3)(A) of this section. However, a district receiving such an exemption will be required to allow evaluation of Kindergarten-Grade 2 student performance by the state, or its designee or its evaluator, using a Kindergarten reading diagnostic instrument compatible with the SRCS or any other developmentally appropriate diagnostic assessment instrument.

(k) Technical assistance. The TEA or its contractors will provide technical assistance, contingent on available funding, to implement proven school readiness components to selected school districts and their school readiness integration partners. Based on a comprehensive analysis of student performance, SRCS results, periodic activity/progress reports, final evaluation reports, and other relevant data from grantees, selected grantees and their school readiness integration partners will be required to participate in the technical assistance.

(l) Evaluation. Each grantee operating a prekindergarten program using Prekindergarten Early Start Grant Program funds must comply with evaluation procedures consistent with the TEC, §29.154, in a manner established by the commissioner. Annual submission of evaluation reports based on program quality and student performance will be required in the manner and time set forth in the application for funding.

(m) Revocation.

(1) The commissioner may revoke a grant award for the Prekindergarten Early Start Grant Program based on the following factors:

(A) noncompliance with application assurances and/or the provisions of this section;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to participate in data collection and audits;

(D) failure to meet performance standards specified in the application; or

(E) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the Prekindergarten Early Start Grant Program.

(2) A decision by the commissioner to revoke the grant award of a Prekindergarten Early Start Grant Program is final and may not be appealed.

(n) Recovery of funds. The commissioner may audit the use of grant funds and may recover funds against any state provided funds.

(o) Implementation. The funding structure delineated in subsection (e) of this section takes effect beginning with school year 2011-2012.

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 June 6, 2011.

TRD-201102015

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: June 26, 2011

Proposal publication date: December 10, 2010

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



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.11

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.11, Schedule of Sanctions, without changes to the proposed text as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2076). The rule text will not be republished.

The amendment moves "Failure to Respond to Board Inquiries" from Category IV to Category I and moves "Failure to Report Criminal Conviction" from Category V to Category I. Additionally, the amendment adds "Practicing Outside the Scope of Practice of Chiropractic" to the Maximum Sanctions Table as a Category I offense.

The Enforcement Committee has noted an increasing number of cases where a Respondent in an enforcement action does not respond to Board inquiries, as required by §75.6, or the Respondent does not report a criminal conviction to the Board, as required by §75.3(f). Therefore, the Board feels that increasing penalties by moving the offenses to Category I will deter Respondents from failing to respond and failing to report criminal convictions.

Additionally, the amendment adds "Practicing Outside the Scope of Practice of Chiropractic" to the Table as a Category I offense. Previously, this offense was not specifically detailed in the Table. In the interest of ensuring licensed chiropractors are aware of the specific penalties for practicing outside the scope of practice as defined by Board rules and Chapter 201 of the Occupations Code, the Board added this offense to the Table.

No comments were received by the Board in response to the proposed amendment.

This amendment is adopted under Texas Occupations Code §201.152, relating to rules, and §201.503, relating to schedule of sanctions. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.153 requires the Board to adopt a schedule of the maximum amount of sanctions that may be assessed against a licensee

for each category of violation of Chapter 201 of the Occupations 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 June 3, 2011.

TRD-201101996

Yvette Yarbrough

Board Attorney

Texas Board of Chiropractic Examiners

Effective date: June 23, 2011

Proposal publication date: April 1, 2011

For further information, please call: (512) 305-6716



CHAPTER 77. ADVERTISING AND PUBLIC COMMUNICATION

22 TAC §77.2

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §77.2, Publicity, without changes to the proposed text as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2077). The rule text will not be republished.

The amendment requires licensees who use the phrase "Board Certified" or similar terminology in any form of public communication to identify in that communication the board certifying said credentials. Clear identification of credentials makes it easier for the public and the Board to evaluate a licensee's qualifications. It also prevents false, misleading or deceptive advertising regarding a licensee's qualifications.

No comments were received by the Board in response to the proposed amendment.

This amendment is adopted under Texas Occupations Code §201.152, relating to rules, and §201.155, relating to restrictions on advertising. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.155 states that the Board may adopt rules restricting advertising to prohibit false, misleading or deceptive practices.

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 June 3, 2011.

TRD-201101997

Yvette Yarbrough

Board Attorney

Texas Board of Chiropractic Examiners

Effective date: June 23, 2011

Proposal publication date: April 1, 2011

For further information, please call: (512) 305-6716



22 TAC §77.5

The Texas Board of Chiropractic Examiners (Board) adopts new §77.5, Misleading Claims, without changes to the proposed text as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2077). The new rule will not be republished.

The new rule clearly prohibits certain claims in advertisements for chiropractic services and states what is considered to be a "false, deceptive, unfair or misleading" advertisement.

The Board received no comments on the proposed new rule.

This new rule is adopted under Texas Occupations Code §201.152, relating to rules, and §201.155, relating to restrictions on advertising. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.155 authorizes the Board to restrict false, misleading, or deceptive advertising

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 June 3, 2011.

TRD-201101995

Yvette Yarbrough

Board Attorney

Texas Board of Chiropractic Examiners

Effective date: June 23, 2011

Proposal publication date: April 1, 2011

For further information, please call: (512) 305-6716



CHAPTER 78. CHIROPRACTIC RADIOLOGIC TECHNOLOGISTS

22 TAC §78.1

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §78.1, Registration of Chiropractic Radiologic Technologists, without changes to the proposed text as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2077). The rule text will not be republished.

The amendment removes the requirement that a Radiologic Technologist show proof of continuing education to the Board upon renewal. Radiologic Technologists are required to register with the Department of State Health Services (DSHS) and must show proof of continuing education to DSHS. The prior requirement to show proof to the Board and for the Board to monitor compliance duplicated the efforts of DSHS and put an unnecessary burden on Board staff. The Board now only requires a Radiologic Technologist to provide proof that he/she is currently registered with DSHS or that the Doctor of Chiropractic (D.C.) employing the Radiologic Technologist has a current hardship exemption approved by DSHS.

Additionally, the amendment removes references to the Texas Department of Health (TDH), which has been renamed the Department of State Health Services (DSHS), and reflects proper citations to the Texas Administrative Code.

No comments were received by the Board in response to the proposed amendment.

This amendment is adopted under Texas Occupations Code §201.152, relating to rules, and §201.452, relating to use of x-rays. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.452 states that the Board may require evidence of proper training and safety in the use of analytical and diagnostic x-ray.

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 June 3, 2011.
TRD-201101994

Yvette Yarbrough
Board Attorney
Texas Board of Chiropractic Examiners
Effective date: June 23, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 305-6716



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §33.23(b)

Liquor Permits and Certificates	
Agent's Permit (A)	\$94.00
Airline Beverage Permit (AB)	\$327.00
Beverage Cartage Permit (PE)	\$151.00
Bonded Warehouse Permit (Dry Area) (JD)	\$136.00
Bonded Warehouse Permit (J)	\$136.00
Brewer's Permit (B)	\$576.00
Carrier's Permit (C)	\$252.00
Caterer's Permit (CB)	\$278.00
Direct Shipper's Permit (DS)	\$376.00
Distiller's & Rectifier's Permit (D)	\$350.00
Food and Beverage Certificate (FB)	\$576.00
Forwarding Center Authority (FC)	\$278.00
General Class B Wholesaler's Permit (X)	\$651.00
Industrial Permit (I)	\$261.00
Local Cartage Permit (E)	\$202.00
Local Cartage Transfer Permit (ET)	\$202.00
Local Class B Wholesaler's Permit (LX)	\$651.00
Local Distributor's Permit (LP)	\$452.00
Local Industrial Alcohol Manufacturer's Permit (LI)	\$327.00
Manufacturer's Agent's Permit (T)	\$94.00
Manufacturer's Agent's Warehousing Permit (AW)	\$651.00
Market Research Packager's Permit (MR)	\$127.00
Minibar Permit (MI)	\$350.00
Mixed Beverage Late Hours Permit (LB)	\$327.00
Mixed Beverage Permit (MB)	\$602.00
Mixed Beverage Restaurant Permit with Food and Beverage Certificate (RM)	\$602.00
Non Resident Brewer's Permit (U)	\$376.00

Non Resident Seller's Permit (S)	\$376.00
Package Store Permit (P)	\$501.00
Package Store Tasting Permit (PS)	\$176.00
Passenger Train Beverage Permit (PT)	\$602.00
Private Carrier's Permit (O)	\$252.00
Private Club Beer and Wine Permit (NB)	\$901.00
Private Club Late Hours Permit (NL)	\$350.00
Private Club Registration Permit (N)	\$901.00
Private Storage Permit (L)	\$202.00
Promotional Permit (PR)	\$376.00
Public Storage Permit (K)	\$202.00
Wholesaler's Permit (W)	\$701.00
Wine and Beer Retailer's Permit Excursion Boat (V)	\$553.00
Wine and Beer Retailer's Permit Railway Car (Y)	\$553.00
Wine Bottler's Permit (Z)	\$602.00
Wine Only Package Store Permit (Q)	\$553.00
Winery Festival Permit (GF)	\$278.00
Winery Permit (G)	\$701.00
Winery Storage Permit (GS)	\$202.00
Beer Licenses and Wine and Beer Permits	
Agent's Beer License (BK)	\$94.00
Beer Retailer's Off Premise License (BF)	\$553.00
Beer Retailer's On Premise License (BE)	\$553.00
Branch Distributor's License (BC)	\$701.00
Brewpub License (BP)	\$426.00
General Distributor's License (BB)	\$701.00
Importer's Carrier's License (BJ)	\$202.00
Importer's License (BI)	\$278.00
Local Distributor's License (BD)	\$701.00
Manufacturer's License (BA)	\$651.00
Manufacturer's Warehouse License (MW)	\$553.00

Non Resident Manufacturer's License (BS)	\$576.00
Retail Dealer's On Premise Late Hours License (BL)	\$327.00
Storage License (SL)	\$202.00
Wine and Beer Retailer's Off Premise Permit (BQ)	\$553.00
Wine and Beer Retailer's Permit (BG)	\$553.00

Figure: 16 TAC §33.23(c)

Daily Temporary Mixed Beverage Permit (TB)	\$201.00
Daily Temporary Private Club Registration Permit (TN)	\$226.00
Temporary Charitable Auction Permit (CA)	\$201.00
Temporary License (BH)	\$201.00
Temporary Wine and Beer Retailers Permit (BH) and (HP)	\$201.00
Temporary Special 3 Day Wine and Beer License (SB)	\$201.00

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.

Texas Department of Agriculture

Notice of Extension of Comment Period

The Texas Department of Agriculture (the department) has extended the comment period for the acceptance of public comment on the proposal published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 2809), regarding the amendments to 4 TAC Chapter 12, §§12.11, 12.13, and 12.14 of the department's weights and measures regulations. The department has withdrawn the proposed amendments to §12.12 and will republish proposed amendments to that section in a later filing. The public comment period has been extended to June 24, 2011. All comments must be received by the department no later than 5:00 p.m. on that date and must be directed to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-201102054

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: June 8, 2011

Ark-Tex Council of Governments

Request for Qualifications for Construction Contractors

The Ark-Tex Council of Governments (ATCOG) Area Agency on Aging is preparing a list of qualified contractors for its Amy Young Barrier Removal Program serving the following nine (9) counties: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River and Titus.

Qualified contractors will provide rehabilitation of owner-occupied homes and/or renter-occupied housing units in support of the Amy Young Barrier Removal Program. Contractors will be required to meet all applicable state and local housing quality standards and code requirements. Modifications for Accessibility for the Disabled are performed under this grant.

Scope of work, general requirements and insurance limits must be provided at the time that the bid is presented. General liability insurance, workers compensation and bonding will be required of all applicants. All responses to this RFQ must be submitted in writing to the ATCOG office at 4808 Elizabeth Street, Texarkana, Texas, by 2:00 p.m. on Friday, June 24, 2011; faxed quotes will NOT be accepted. Late submissions will NOT be considered. The ATCOG Area Agency on Aging reserves the right to reject any or all proposals. All questions regarding this request may be direct to Diane McKinnon, Manager of ATCOG Area Agency on Aging, at (903) 832-8636.

Interested parties may follow the link on the web page for instructions and documents to complete in order to submit an application. Additional information can be requested by contacting Diane McKinnon by phone number above, by fax at (903) 832-3441, or by e-mail at dmckinnon@atcog.org. All questions and responses will be made available to all applicants upon request and shall be subject to the Open Records Act.

Bidders requiring clarification or interpretation of the Bidding Documents shall make a written request to Diane McKinnon no later than one week prior to the date for receipt of bids set forth in the instruction to bidders above (one week prior to June 24, 2011).

TRD-201101993

Brenda Davis

Director of Finance and Administration

Ark-Tex Council of Governments

Filed: June 3, 2011

Office of the Attorney General

Texas Health and Safety and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas and the State of Texas acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. Air Products LLC*; Cause No. 2010-38479; in the 152nd Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant owned and/or operated a chemical plant in Pasadena, Texas. On February 16, 2010, Defendant released nitric acid in violation of its permit. The release also resulted in a cloud of nitric acid requiring the temporary closure of a road.

Proposed Agreed Judgment: The Agreed Final Judgment orders the Defendant to collectively pay \$36,600.00 in civil penalties to Harris County and the State of Texas.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Environmental Protection and Administrative Law Division, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201102044

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: June 7, 2011

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Coastal Coordination Council

**Notice and Opportunity to Comment on Requests for
Consistency Agreement/Concurrence Under the Texas Coastal
Management Program**

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 14, 2011, through May 20, 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 website. The notice was published on the website on June 8, 2011. The public comment period for this project will close at 5:00 p.m. on July 8, 2011.

FEDERAL AGENCY ACTIONS:

Applicant: Greg Betterton; Location: The project site is located 7 miles east-northeast of the intersection of State Highway 185 and FM 1289 in Calhoun County, Texas. The site can be located on the U.S.G.S. quadrangle map titled: Port O'Connor, Texas. Approximate latitude and longitude (NAD 83) Latitude: 28.47038 degrees; Longitude: -96.43425 degrees. Project Description: The project purpose is to construct a large-scale inland marina community with waterfront lots and associated boat access on the middle Texas coast. The new community would provide recreational opportunities and convenient access to the residents of the major metropolitan areas in Central and South Texas. The proposed 183-acre multi-use development will include 244 waterfront and water-view lots, 9.24 acres of condominium space, 3.79 acres of townhome space, 2.50 acres for a proposed restaurant and marina building complex, a 37.94 acre saltwater basin with an accompanying marina and a 1,720-foot by 100-foot access channel and associated breakwaters for ingress and egress of recreational boats into Matagorda Bay. As part of the proposed development, 418 covered boat docks of various sizes, a community boat ramp, and associated public infrastructure facilities (roadways, stormwater management facilities and public utilities) are proposed. Approximately 635,000 cubic yards of soils from on-site uplands and interior freshwater wetlands will be excavated for construction of the saltwater basin and marina. Approximately 31,570 cubic yards of bay bottom sediments and unvegetated tidal fringe bottom are proposed to be excavated from Matagorda Bay for construction of the access channel. The project is anticipated to impact 10.69 acres of jurisdictional waters of the U.S., including wetlands. A small tidal fringe wetland (0.10 acre) will be impacted as a result of the construction of the proposed access channel and breakwaters. The applicant proposes to perform in-kind mitigation to compensate for impacts to natural resources resulting from construction of the proposed project. CMP Project No.: 11-0377-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-01336 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).

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-201102016
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: June 6, 2011

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/13/11 - 06/19/11 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 06/13/11 - 06/19/11 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201102038
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 7, 2011

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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 (TWC), §7.075. TWC, §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. TWC, §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 **July 18, 2011**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the require-

ments of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 18, 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, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Aqua Development, Incorporated dba Aqua Texas, Incorporated; DOCKET NUMBER: 2011-0230-MWD-E; IDENTIFIER: RN102343035; LOCATION: Travis County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014061001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0014061001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010 by September 1, 2010; PENALTY: \$4,582; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: Aus-Tex Body & Frame, Incorporated; DOCKET NUMBER: 2011-0602-AIR-E; IDENTIFIER: RN106099658; LOCATION: Pflugerville, Travis County; TYPE OF FACILITY: auto body refinishing; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code §382.085(b) and §382.0518(a), by failing to obtain permit authorization for a source of air emissions prior to the commencement of operations of a facility which emits air contaminants; PENALTY: \$900; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(3) COMPANY: AYRA INVESTMENT, INCORPORATED dba Dos Amigas; DOCKET NUMBER: 2011-0268-PST-E; IDENTIFIER: RN102365848; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the underground storage tanks (USTs) within 30 days of the occurrence of the change or addition; 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 vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II equipment; 30 TAC §115.246(1) and (6) and THSC, §382.085(b), by failing to maintain all required Stage II records at the station and make them immediately available for review upon request by agency

personnel; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; and 30 TAC §115.222(5) and THSC, §382.085(b), by failing to ensure that each UST vent line is equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch; PENALTY: \$7,878; ENFORCEMENT COORDINATOR: Brianna Carlson, (361) 825-3420; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Beatrice Hernandez; DOCKET NUMBER: 2011-0826-WOC-E; IDENTIFIER: RN103682639; LOCATION: Anson, Jones County; TYPE OF FACILITY: water treatment plant; 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: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: CHILTON WATER SUPPLY AND SEWER SERVICE CORPORATION; DOCKET NUMBER: 2011-0527-MWD-E; IDENTIFIER: RN102285814; LOCATION: Falls County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010811001, Monitoring and Reporting Requirements Number 1 and 30 TAC §§305.125(1), 319.4, and 319.7(d), by failing to submit timely and/or complete monitoring results at the intervals specified in the permit; TPDES Permit Number WQ0010811001, Sludge Provisions and 30 TAC §305.125(17), by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: \$1,152; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of Munday; DOCKET NUMBER: 2010-1233-MWD-E; IDENTIFIER: RN103016192; LOCATION: Knox County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010228002, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and TCEQ Agreed Order Docket Number 2007-1582-MWD, by failing to comply with the permitted effluent limitations; 30 TAC §§305.125(1), 305.125(17), and 319.7(d) and TPDES Permit Number WQ0010228002, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring report for the monitoring period ending December 31, 2009 by the 20th day of the following month; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010228002, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2009; PENALTY: \$25,748; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: City of Oglesby; DOCKET NUMBER: 2011-0439-MWD-E; IDENTIFIER: RN101918704; LOCATION: Coryell County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010914001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$4,740; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: City of Star Harbor; DOCKET NUMBER: 2011-0562-PWS-E; IDENTIFIER: RN101392025; LOCATION: Star Harbor, Henderson County; TYPE OF FACILITY: public water sup-

ply; RULE VIOLATED: 30 TAC §290.113(f)(5) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids based on a running annual average; PENALTY: \$305; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Complex OMV, Incorporated dba Diamond Food Mart; DOCKET NUMBER: 2010-2082-PST-E; IDENTIFIER: RN101728749; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the system; PENALTY: \$5,108; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2011-0297-AIR-E; IDENTIFIER: RN100216613; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Texas Health and Safety Code (THSC), §382.085(b), and New Source Review (NSR) Permit Number 3131A, General Conditions (GC) Number 8 and Special Conditions (SC) Numbers 1, 10, and 11, by failing to prevent unauthorized emissions during an event that occurred on June 17, 2010; 30 TAC §116.115(b)(2)(F) and (c), THSC, §382.085(b), and NSR Permit Number 3131A, GC Number 8 and SC Numbers 1, 10, and 11, by failing to prevent unauthorized emissions during an event that occurred on June 25, 2010; 30 TAC §116.115(b)(2)(F) and (c), THSC, §382.085(b), and NSR Permit Number 3131A, GC Number 8 and SC Number 1, by failing to prevent unauthorized emissions during an event that occurred from July 11, 2010 to July 12, 2010; PENALTY: \$15,050; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2011-0198-AIR-E; IDENTIFIER: RN100210319; LOCATION: Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), Texas Health and Safety (THSC), §382.085(b), and Air Permit Numbers 18978 and PSD-TX-752M3, Special Conditions Number 1, by failing to prevent unauthorized emissions due to the restriction of the dimethylformamide flow to the Acetylene Absorber; 30 TAC §116.115(c), THSC, §382.085(b), and Air Permit Number 4477, Special Conditions Number 1, by failing to prevent unauthorized emissions and to limit highly reactive volatile organic compounds to 1,200 pounds per hour; PENALTY: \$20,000; Supplemental Environmental Project offset amount of \$8,000 applied to Barbers Hill Independent School District, Barbers Hill Energy Efficiency Program; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2011-0396-AIR-E; IDENTIFIER: RN102212925; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Numbers 3452 and PSD-TX-302M2, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; Supplemental

Environmental Project offset amount of \$8,000 applied to Barbers Hill Independent School District, Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Flint Hills Resources Port Arthur, LLC; DOCKET NUMBER: 2011-0192-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Texas Health and Safety Code, §382.085(b), Flexible Air Permit Numbers 16989 and PSD-TX-794, Special Conditions Number 1, and Federal Operating Permit Number O-1317, Special Terms and Conditions, by failing to prevent unauthorized emissions; PENALTY: \$10,000; Supplemental Environmental Project offset amount of \$4,000 applied to Southeast Texas Regional Planning Commission, West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Harris County Water Corporation; DOCKET NUMBER: 2010-1803-UTL-E; IDENTIFIER: RN101214468; LOCATION: Hockley, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(o)(1) and §291.162(a) and (j) and TWC, §13.1395(b)(2), by failing to adopt and submit to the executive director for approval by the extension due date of June 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$315; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Houston Refining LP; DOCKET NUMBER: 2011-0308-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a), Texas Health and Safety Code (THSC), §382.085(b) and Flexible Permit Numbers 2167 and PSD-TX-985, Special Conditions Number 1, by failing to prevent the unauthorized release of 8,784 pounds of nitrogen oxides from the 732 Fluid Catalytic Cracking Unit, Emission Point Number 732D0063, during an emissions event (Incident Number 147093) that began on October 11, 2010 and lasted 22 hours; and 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to submit the initial notification for Incident Number 147093 within 24 hours after the discovery of the event; PENALTY: \$10,568; Supplemental Environmental Project offset amount of \$5,284 applied to Barbers Hill Independent School District, Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2011-0223-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Numbers 95 and PSD-TX-854M2, Special Condition Number (SC) 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent low oil differential pressure on Compressor C-201, which resulted in a compressor trip and unauthorized emissions in the Olefins Number 1 Unit on September 29, 2010; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Numbers 95 and PSD-TX-854M2, SC Number 1, and THSC, §382.085(b), by failing to prevent air from entering a cracked gas header resulting in unauthorized emissions in the Olefins Number 1 Unit on October 7, 2010, during an emissions event (Incident Number 145798); 30 TAC §101.20(3) and

§116.715(a), Flexible Permit Number 95, SC Number 1, and THSC, §382.085(b), by failing upon startup, to reopen the isolation valve on one of the two ports of the Buffer Gas Flowmeter for the C-201 Cracked Gas Compressor which resulted in erroneously high readings and unauthorized emissions in the Olefins Number 1 Unit on October 9, 2010; 30 TAC §101.20(3) and §116.715(a), Permit Numbers 95 and PSD-TX-854M2, SC Number 1, and THSC, §382.085(b), by failing to prevent an on-site contractor from miscoding a selector switch in the Acetylene Converter interlock system, resulting in the tripping of the Olefins Number 2 Unit on October 13, 2010; 30 TAC §§101.20(2) and (3), 116.715(a) and 122.143(4), Flexible Permit Numbers 95 and PSD-TX-854M2, SC Number 8, Federal Operating Permit O-02327, Special Terms and Conditions 1.A. and 18.A., and 40 Code of Federal Regulations (CFR) §63.987(b)(1), by failing to conduct the initial performance tests on the Olefins 1 and 2 Flares when they became subject to 40 CFR Part 63, Subpart FFFF regulations on May 10, 2008; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Numbers 95 and PSD-TX-854M2, SC Number 1, and THSC, §382.085(b), by failing to prevent air from entering a cracked gas header due to operator error resulting in unauthorized emissions in the Olefins Numbers 1 and 2 Units on October 10, 2010; PENALTY: \$59,520; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Irvin Peterson, Executor for the Estate of Dossie Foster; DOCKET NUMBER: 2011-0292-PST-E; IDENTIFIER: RN105951875; LOCATION: College Station, Brazos County; TYPE OF FACILITY: abandoned gasoline station; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an underground storage tank system for which any applicable component of the system is not brought into timely compliance with the upgrade; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Kun Won Yu dba Terry's Supermarket; DOCKET NUMBER: 2011-0263-PST-E; IDENTIFIER: RN102959319; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: grocery store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and Texas Health and Safety (THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection upon request by agency personnel; 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification; PENALTY: \$5,323; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6981, (817) 588-5800.

(19) COMPANY: Larry R. Williams; DOCKET NUMBER: 2011-0795-WOC-E; IDENTIFIER: RN106115538; LOCATION: Anson, Jones County; TYPE OF FACILITY: water treatment plant; 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: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(20) COMPANY: Linda W. Ball dba Lazy Acres Mobile Home Park; DOCKET NUMBER: 2011-0156-UTL-E; IDENTIFIER:

RN102708153; LOCATION: Baytown, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(o)(1) and §291.162(a) and (j) and TWC, §13.1395(b)(2), by failing to adopt and submit to the executive director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$735; ENFORCEMENT COORDINATOR: Andrea Byington, (512) 239-2579; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Melvin Wilson; DOCKET NUMBER: 2011-0789-WOC-E; IDENTIFIER: RN105644298; LOCATION: Quinlan, Hunt County; TYPE OF FACILITY: wastewater treatment plant; 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: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Miguel Garza, Jr. dba 83 Motel & Grocery; DOCKET NUMBER: 2011-0368-PST-E; IDENTIFIER: RN101688133; LOCATION: Falcon Heights, Starr County; TYPE OF FACILITY: property with three inactive underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(23) COMPANY: PVR Gas Resources, LLC; DOCKET NUMBER: 2011-0214-AIR-E; IDENTIFIER: RN100222785; LOCATION: Spearman, Ochiltree County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit Number O-2963/Oil and Gas General Operating Permit (GOP) Number 514 Site-wide requirements (b)(2), and Texas Health and Safety (THSC), §382.085(b), by failing to submit a complete and accurate semi-annual deviation report; 30 TAC §§116.615(2), 116.615(9), and 122.143(4), Standard Permit Registration Number 82257, and Federal Operating Permit Number O-2963/Oil and Gas GOP Number 514 Site-wide requirements (b)(1), and THSC, §382.085(b), by failing to ensure that air pollution emission capture and abatement equipment is operating as represented in the Standard Permit; PENALTY: \$10,235; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(24) COMPANY: R & S CONCRETE, L.L.C.; DOCKET NUMBER: 2011-0441-IWD-E; IDENTIFIER: RN101916997; LOCATION: Houston, Harris County; TYPE OF FACILITY: ready-mix concrete facility; RULE VIOLATED: 30 TAC §305.125(17) and §319.1 and Texas Pollutant Discharge Elimination System General Permit Number TXG110384, Part IV Standard Permit Conditions 7(f), by failing to timely submit discharge monitoring reports for the monitoring periods ending July 31, 2010 - December 31, 2010 for Outfalls 001 and 002; PENALTY: \$1,560; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Walterscheid Meat Company dba Kountry Korner; DOCKET NUMBER: 2011-0485-PST-E; IDENTIFIER: RN101555639; LOCATION: Muenster, Cooke County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank; PENALTY: \$2,136; ENFORCEMENT

COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: YES COMMUNITIES, INCORPORATED dba Northwest Pines Mobile Home Community; DOCKET NUMBER: 2011-0437-UTL-E; IDENTIFIER: RN101231264; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(o)(1) and §291.162(a) and (j) and TWC, §13.1395(b)(2), by failing to submit to the executive director for approval by the required deadline an adoptable emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$436; ENFORCEMENT COORDINATOR: Kelly Wisian, (512) 239-2570; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201102045

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 7, 2011



Notice of Water Quality Applications

The following notices were issued on May 27, 2011 through June 3, 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

UNITED STATES DEPARTMENT OF ENERGY AND WILCOX TECHNICAL SERVICES PANTEX, L.L.C., which operates the Pantex Plant, a facility principally engaged in the assembly of nuclear weapons from components received from other Department of Energy plants; the fabrication of chemical high explosive components for nuclear weapons; surveillance testing and processing of chemical high explosives; disassembly of nuclear weapons; maintenance, modification, repair and nonexplosive testing of nuclear weapons components; and disposal of treated environmental restoration wastewater, has applied for a renewal of Texas Water Quality Permit No. WQ0002296000, which authorizes the discharge of domestic effluent and industrial effluent at a daily average flow not exceed 560,000 gallons per day. The facility is located approximately 17 miles northeast of the City of Amarillo and 10 miles west of the City of Panhandle, west of Farm-to-Market Road 2373, south of Farm-to-Market Road 293 and north of U.S. Highway 60, Carson County, Texas 79068.

SHIN-ETSU SILICONES OF AMERICA, INC., which operates an organic chemical manufacturing plant that produces carbon functional silane, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004362000, which authorizes the discharge of process wastewater, process area storm water, utility waters (cooling tower and boiler blowdown), water treatment waste (caustic soda dilution and softener regenerate), and treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day via Outfall 001. The facility is located at a point equidistant between Chubb Lake and the portion of the railroad tracks running southeast of Chubb Lake, approximately one (1) mile west of the Village of

Oyster Creek and approximately 2.5 miles north of the City of Freeport, Brazoria County, Texas 77541.

WATERWOOD MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a new permit, proposed TPDES Permit No. WQ0011447002, to authorize the discharge of treated filter backwash, sludge blowdown and clarifier cleaning effluent from a water treatment plant at a daily average flow not to exceed 9,000 gallons per day. The facility is proposed to be located approximately 2,000 feet southeast of the intersection of Farm-to-Market Road 980 and Emerald Way, in Point Blank in San Jacinto County, Texas 77320. The intersection of Emerald Way and FM 980 is approximately 10 miles northwest of the intersection of US 190 and FM 980.

CITY OF WILSON has applied for a major amendment to Texas Commission on Environmental Quality (TCEQ) Permit No. WQ0010624001, to authorize a change in treatment process from Imhoff tank to a pond system, change in method of effluent disposal from evaporation to surface irrigation and an increase in the daily average flow from 58,000 gallons per day to 60,000 gallons per day. The proposed amendment also requests to irrigate 40 acres of non-public access agricultural land and provide effluent storage in the final phase. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 58,000 gallons per day via evaporation which will remain as the interim phase. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 0.6 mile west of the intersection of Farm-to-Market Road 400 and Farm-to-Market Road 211, and approximately 900 feet south of Farm-to-Market Road 211 in Lynn County, Texas 79381.

SABINE VALLEY REGIONAL MENTAL HEALTH AND MENTAL RETARDATION CENTER has applied for a renewal of TPDES Permit No. WQ0011361001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located on the north side of State Highway 154, approximately 5.5 miles northwest of the intersection of U.S. Highway 80 and Loop 390 in Harrison County, Texas 75670.

CITY OF MOUNT ENTERPRISE has applied for a renewal of TPDES Permit No. WQ0014283001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located north of County Road 3207, 0.5 mile west of the intersection of U.S. Highway 259 and County Road 3207 in Rusk County, Texas 75681.

NORIT AMERICAS, INC., which operates the Marshall Plant, has applied for a renewal of TPDES Permit No. WQ0000703000, which authorizes the discharge of treated process wastewater, utility wastewater, and storm water at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 002. The facility is located at the west end of University Avenue, approximately 1300 feet west of the intersection of University Avenue and Martin Luther King, Jr. Boulevard, on the southwest edge of the City of Marshall, Harrison County, Texas 75670.

THE CARDON GROUP, L.L.C. has applied for a new permit, proposed TPDES Permit No. WQ0014991001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 960,000 gallons per day. The facility will be located approximately 4,000 feet south and 1,500 feet west of the intersection of State Highway 288 and Farm-to-Market Road 1462 in Brazoria County, Texas 77583.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 10 DAYS OF THE ISSUED DATE OF THE NOTICE.

WHITEWATER LAND PARTNERS, LLC has applied for a minor amendment to the TCEQ permit WQ0014806001 to add a new Interim phase with a daily average flow of 10,500 gallons per day. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via public access subsurface area drip dispersal system with a minimum area of 46 acres, which will remain the same. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located 0.9 miles east-northeast of the intersection of Farm-to-Market Roads 306 and 2673 in Comal County, Texas 78132.

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-201102061
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: June 8, 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

Ismael Kino Flores, 1405 Enchanted Circle, Palmview, Texas 78572-1956

Manuel J. Barraza, 8090 Alameda Avenue, El Paso, Texas 79915-4704

Deadline: 30-Day Pre-Election Report due April 14, 2011 for Committees

E. N. Banderas, Irving Voices, 2505 Texas Drive, Suite 10420, Irving, Texas 75062

Deadline: Monthly Report due April 5, 2011 for Committees

Gilbert L. Gomez, Galveston Municipal Police Association Political Action Committee, P.O. Box 8004, Galveston, Texas 77553-8004

TRD-201101973
David Reisman
Executive Director
Texas Ethics Commission
Filed: June 1, 2011

Texas Facilities Commission

Request for Proposal #303-1-20281

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC) and the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #303-1-20281. TFC seeks a 5 or 10 year lease of approximately 19,871 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is July 1, 2011 and the deadline for proposals is July 15, 2011 at 3:00 p.m. The award date is September 21, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=94907.

TRD-201101976
Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 2, 2011

Golden Crescent Workforce Development Board

Request for Qualifications

Golden Crescent Workforce Development Board (GCWDB) is soliciting interested qualified individuals to serve as evaluators for proposals received by the Golden Crescent Workforce Development Board (Board) for the management and operation of the Golden Crescent WDA Centers RFP. The Board will select three to five evaluators as a result of this RFQ.

Key Qualifications:

Individuals interested in serving as evaluators must meet the following criteria:

Thorough knowledge and understanding of Workforce programs including:

- WIA Adult, Dislocated Worker, Youth
- WIA Rapid Response
- Child Care
- Employment Services
- Veterans Services
- TANF/Choices
- Communities In Schools (CIS)
- SNAP E&T

Prior experience in evaluating proposals;

Available to review/score proposals between July 21 - August 5, 2011; and

Available for a possible conference call or meeting the week of August 8, 2011.

RFP Evaluation Schedule:

July 18, 2011 - GCWDB RFP proposals due

July 21, 2011 - Proposals with evaluation instruments and instructions delivered to selected evaluators

July 25 - August 5, 2011 - Proposals reviewed/scored. Completed Evaluation forms and Proposals will be returned to the Board

August 11, 2011 - Conference call with evaluators (If Required)

Compensation:

Selected evaluators will be paid \$375 for each proposal evaluated plus travel expenses at the established state rate if travel is required.

Response:

Individuals interested in responding to this Request for Qualifications should submit a cover letter and brief biographical synopsis detailing experience and key qualifications identified above to:

Golden Crescent Workforce Development Board

Attn: Henry Guajardo

P.O. Box 1936

120 South Main St. #501

Victoria, Texas 77901

Voice: (361) 576-5872

Fax: (361) 573-0225

Email: henry.guajardo@twc.state.tx.us

For consideration, qualification information must be received no later than 5:00 p.m., June 24, 2011, whether by postal delivery, email or facsimile transmission.

TRD-201102060

Henry Guajardo

Executive Director

Golden Crescent Workforce Development Board

Filed: June 8, 2011



Office of the Governor

Notice of Application and Priorities for the Justice Assistance Grant Program Federal Application

The Governor's Criminal Justice Division (CJD) is preparing its application for the 2011 federal Edward Byrne Justice Assistance Grant Program (JAG). The Federal Fiscal Year (FFY) 2011 allocation to the state of Texas is expected to be \$18.2 million.

CJD proposes to use the FFY 2011 award to fund initiatives that target violent crimes and sexual predators and enhance border security and adult substance abuse diversion programs.

Comments on the application or the priorities may be submitted in writing to Judy Switzer by email at jswitzer@governor.state.tx.us or mailed to the Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711. Comments must be received or post-marked no later than 30 days from the date of publication of this announcement in the *Texas Register*.

TRD-201102052

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: June 8, 2011



Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Grapevine	Health Texas Provider Network dba Grapevine Cardiology	L06396	Grapevine	00	05/11/11
Lubbock	Manhattan Isotope Technology, L.L.C.	L06404	Lubbock	00	05/16/11
Throughout TX	REW Group, L.L.C.	L06405	Houston	00	05/20/11

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Amarillo	The Don And Sybil Harrington Cancer Center	L03053	Amarillo	51	05/20/11
Arlington	USMD Hospital at Arlington	L05727	Arlington	11	05/24/11
Austin	Austin Heart, P.L.L.C. dba Austin Heart	L04623	Austin	71	05/20/11
Austin	Austin Nuclear Pharmacy, Inc.	L05591	Austin	14	05/13/11
Beaumont	Applied Standards Inspection, Inc.	L03072	Beaumont	117	05/17/11
Benbrook	Weatherford International, Inc.	L04286	Benbrook	88	05/24/11
Corpus Christi	All Tech Inspection	L04974	Corpus Christi	14	05/17/11
Dallas	Metrocrest Hospital Authority dba Dallas Medical Center	L02314	Dallas	60	05/24/11
Dallas	IBA Molecular North America, Inc. dba IBA Molecular	L06174	Dallas	08	05/18/11
Decatur	Wise Regional Health System	L02382	Decatur	38	05/13/11
Decatur	Wise Regional Health System	L02382	Decatur	39	05/20/11
Denton	University of North Texas	L00101	Denton	88	05/19/11
El Paso	Providence Memorial Hospital	L02353	El Paso	100	05/25/11
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L02365	El Paso	69	05/25/11
El Paso	El Paso Healthcare System, Ltd. dba Del Sol Medical Center	L02551	El Paso	56	05/25/11
Ennis	PRHC Ennis dba Ennis Regional Medical Center	L05427	Ennis	12	05/23/11
Groves	S & E Healthcare Groves Operations, L.L.C. dba Renaissance Hospital Groves	L06325	Groves	01	05/13/11
Houston	Memorial Hermann Hospital System dba Memorial Hospital Memorial City	L01168	Houston	127	05/17/11
Houston	Rice University	L04639	Houston	13	05/24/11
Houston	Tops Specialty Hospital, Ltd.	L05441	Houston	18	05/26/11
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	63	05/20/11
Houston	Cardinal Health	L05536	Houston	28	05/17/11
Houston	Mukarram Ali Baig, M.D., P.A. dba Heart Care Center of Northwest Houston	L05539	Houston	12	05/20/11
Houston	Houston Cyclotron Partners, L.P. dba Cyclotope	L05585	Houston	18	05/23/11
Houston	NIS Holdings, Inc. dba Nuclear Imaging Services	L05775	Houston	71	05/19/11
Houston	NIS Holdings, Inc. dba Nuclear Imaging Services	L05775	Houston	72	05/25/11
Houston	Zilkha Biomass Crockett, L.L.C.	L06381	Houston	02	05/16/11
Houston	Surefire Industries USA, L.L.C.	L06385	Houston	01	05/17/11
Ingleside	Oceaneering International, Inc.	L04463	Ingleside	77	05/12/11
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	85	05/20/11

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Lubbock	Texas Tech University	L01536	Lubbock	95	05/16/11
Paris	Heart Clinic of Paris, P.A.	L06013	Paris	02	05/24/11
Pasadena	University Cancer Center Huntsville Brenham, Inc.	L06070	Pasadena	04	05/18/11
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	195	05/13/11
San Antonio	University of Texas Health Science Center	L01279	San Antonio	128	05/23/11
San Antonio	University of Texas Health Science Center	L06029	San Antonio	05	05/13/11
Sherman	Cardinal Health 414, L.L.C. dba Cardinal Health Nuclear Pharmacy Services	L05461	Sherman	16	05/26/11
Throughout TX	LML Engineering, Inc.	L06173	Arlington	01	05/24/11
Throughout TX	Savage-Tolk Corporation	L02672	Earth	24	05/26/11
Throughout TX	Pioneer Wireline Services, L.L.C.	L06220	Graham	08	05/24/11
Throughout TX	W. W. Webber, L.L.C.	L04904	Hillsboro	15	05/16/11
Throughout TX	Cardinal Health	L01911	Houston	146	05/17/11
Throughout TX	Aviles Engineering Corporation	L03016	Houston	27	05/17/11
Throughout TX	Arends Inspection, L.L.C.	L06333	Houston	03	05/24/11
Throughout TX	Lighthouse Environmental Services, Inc.	L06224	Pearland	01	05/23/11
Throughout TX	General Electric Company dba G.E. Healthcare	L05653	Raywood	08	05/26/11
Throughout TX	Carrillo & Associates, Inc.	L05804	San Antonio	09	05/17/11
Tyler	Delek Refining, Ltd.	L02289	Tyler	22	05/18/11
Tyler	Nutech, Inc.	L04274	Tyler	67	05/19/11

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Abilene Cardiology	L04315	Abilene	35	05/18/11
Dallas	Southern Methodist University	L02887	Dallas	23	05/20/11
Odessa	B & A Laboratories, Inc. dba Environmental Lab of Texas/Xenco Laboratories	L05499	Odessa	06	05/17/11
Pittsburg	Southwestern Electric Power Company	L02008	Pittsburg	21	05/19/11
Throughout TX	Industrial Asphalt, Inc.	L05453	Austin	08	05/19/11
Throughout TX	Pavetex Engineering and Testing, Inc.	L05533	Dripping Springs	15	05/16/11

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Grapevine	Cor Specialty Associates of North Texas, P.A.	L05576	Grapevine	08	05/11/11
San Antonio	University of Texas Health Science Center dba UTHSCSA Research Imaging Institute	L05556	San Antonio	12	05/23/11
Throughout TX	Grimes & Associates Consulting Engineers, L.P.	L04616	Wolfforth	12	05/23/11
Victoria	K & N Perforators, Inc.	L02300	Victoria	32	05/24/11

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201102037
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: June 6, 2011

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 7, 2011

◆ ◆ ◆
Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 12, 2011, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for Targeted Case Management and Rehabilitative Services for the Mental Health program.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Targeted Case Management (TCM) and Rehabilitative Services are proposed to be effective September 1, 2011.

Methodology and Justification. The proposed reimbursement rates for TCM in the Mental Health program were determined in accordance with the rate setting methodology at 1 TAC §355.743. The proposed reimbursement rates for Rehabilitative Services in the Mental Health program were determined in accordance with the rate setting methodology at 1 TAC §355.781.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after July 1, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201102039

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces 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 September 1, 2011.

The amendment will modify the reimbursement methodology in the State Plan for Hospice Care. This change is being made as a result of the 2012-2013 General Appropriations Act (Article II, Special Provisions Relating to All Health and Human Services Agencies, H.B. 1, 82nd Legislature, Regular Session, 2011) regarding Information on Funding for Provider Rates. In response to H.B. 1, and in accordance with Title 1 of the Texas Administrative Code §355.201(d), the payment rates for Hospice Care provided in a nursing facility (NF) or intermediate care facility for persons with mental retardation (ICF/MR) are proposed to be reduced from 96.96 percent of the associated NF or ICF/MR rate to 95.00 percent of the associated NF or ICF/MR rate, effective September 1, 2011.

The proposed amendment is estimated to result in annual aggregate savings of \$382,404 for the remainder of federal fiscal year (FFY) 2011, with approximately \$231,584 in federal funds and \$150,820 in State General Revenue (GR). For FFY 2012, the estimated aggregate savings are \$4,715,694, with approximately \$2,745,477 in federal funds and \$1,970,217 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Pam McDonald, Director of Rate Analysis for Long Term Services and Supports, 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) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@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-201102013
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 6, 2011

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces 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 September 1, 2011.

The amendment will modify the reimbursement methodology in the State Plan for non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR). This change is being made as a result of the 2012-2013 General Appropriations Act (Article II, Special Provisions Relating to All Health and Human Services Agencies, H.B. 1, 82nd Legislature, Regular Session, 2011) regarding Information on Funding for Provider Rates. In response to H.B. 1, and in accordance with Title 1 of the Texas Administrative Code §355.201(d), the payment rates for non-state operated ICFs/MR that were in effect August 31, 2010, are proposed to be reduced by an additional two percent. This proposed reduction is in addition to the one percent reduction to the August 31, 2010, rates that became effective September 1, 2010, and the two percent reduction to the August 31, 2010, rates that became effective February 1, 2011. The combined impact of these three reductions will be that rates proposed to be effective September 1, 2011, will be five percent less than rates in effect on August 31, 2010.

The non-state operated ICF/MR reimbursement methodology will be modified to indicate that effective September 1, 2011, payment rates will be equal to the rates in effect on August 31, 2010, less five percent.

The proposed amendment is estimated to result in annual aggregate savings of \$540,265 for the remainder of federal fiscal year (FFY) 2011, with approximately \$327,184 in federal funds and \$213,081 in State General Revenue (GR). For FFY 2012, the estimated aggregate savings are \$6,482,149, with approximately \$3,773,907 in federal funds and \$2,708,242 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Pam McDonald, Director of Rate Analysis for Long Term Services and Supports, 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) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@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-201102014

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: June 6, 2011

Texas Department of Housing and Community Affairs

Notice of Public Hearing for the Community Services Block Grant FFY 2012 - 2013 State Application and Plan

In accordance with the U.S. Department of Health and Human Services' requirement for the Community Services Block Grant (CSBG) and in 10 TAC Chapter 5, Subchapter B, §5.209 on the use of CSBG funds, the Texas Department of Housing and Community Affairs (TDHCA) is conducting a public hearing. The primary purpose of the hearing is to solicit comments on the proposed Texas 2012 - 2013 Community Services Block Grant State Application and Plan which describes the proposed use and distribution of CSBG funds for Federal Fiscal Years (FFY) 2012 and 2013. As federal statute requires, not less than ninety percent of the CSBG funds will be distributed to the State's CSBG eligible entities and not more than five percent will be used for state administration, including support for monitoring and for the provision of training and technical assistance. The remaining five percent will be utilized to fund state discretionary projects/initiatives and for disaster assistance recovery.

The draft Application/Plan will be presented to the TDHCA Board of Directors on June 30, 2011. Once approved, the document will be posted and available for review on the Department's website at www.tdhca.state.tx.us in the CSBG Program category.

The public hearing will be held on Friday, July 29, 2011 from 1:30 p.m. to 3:30 p.m. in Room #116 at the TDHCA headquarters office located on 221 East 11th Street in Austin, Texas.

A representative from TDHCA will be present at the hearing to explain the planning process and receive comments from interested citizens and affected groups regarding the proposed Application/Plan. For questions, contact J. Al Almagueer, Senior Planner, in the Community Services Section at (512) 475-3908 or al.almagueer@tdhca.state.tx.us. Comments may be provided in writing or by oral testimony at the hearing. Written comments may be submitted to TDHCA at the time of the hearing, by e-mail to al.almagueer@tdhca.state.tx.us or by mail to P.O. Box 13941, Austin, TX 78711-3941 no later than close of business **August 12, 2011**.

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least two days before the scheduled hearing at (512) 475-3943 or Relay Texas at 1-800-735-2989 so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Cathy Collingsworth, (512) 475-3858 at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201101978

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: June 2, 2011

Texas Department of Insurance

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 ALLEGIANCE COBRA SERVICES, INC., a foreign third party administrator. The home office is MISSOULA, MONTANA.

Application of PMSI, INC., a foreign third party administrator. The home office is TAMPA, FLORIDA.

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-201102053

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: June 8, 2011

North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the January 14, 2011, issue of the *Texas Register* (36 TexReg 180). The selected consultant will perform technical and professional work to deliver a computerized adaptive traffic signal control system.

The consultant selected for this project is Rhythm Engineering LLC, 12351 W. 96th Terrace, Suite 107, Lenexa, Kansas 66215. The amount of the contract is not to exceed \$720,000.

TRD-201101999
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 3, 2011



Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the January 14, 2011 issue of the *Texas Register* (36 TexReg 179). The selected consultant will perform technical and professional work to develop the City of Arlington Division Street Corridor Master Plan and Redevelopment Strategy.

The consultant selected for this project is Freese & Nichols, Inc., 4055 International Plaza, Suite 200, Fort Worth, Texas 76109. The amount of the contract is not to exceed \$93,750.

TRD-201102000
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 3, 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 June 3, 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 Mid-Coast Cablevision, LP to Amend its State-Issued Certificate of Franchise Authority to add the City of El Campo, Texas, Project Number 39469.

The requested amendment is to expand the service area footprint to include the municipality of El Campo, 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 39469.

TRD-201102041

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 7, 2011



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on June 3, 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 Grande Communications Networks, LLC to Amend its State-Issued Certificate of Franchise Authority, Project Number 39472.

The requested amendment is to expand its service area footprint to include the unincorporated area in Nueces County, with boundaries delineated by: the most Northern point starting at the Southern side of Kennedy Memorial Causeway, also known as S. Padre Island Dr., where it spans the inland waterway North of the intersection of Aloha St. and Suntan Ave., following the midline of the inland waterway Southwest to the canal just before Carlos 5th Ct. on the South, turning East into the canal and following on its midline until it forks, turning South into canal where Top Sail St. is located to the East and Cobo de Bara Circle to the West, following the midline of the canal keeping a Southwest direction, then crossing on to land keeping Tesoro Dr. to the West until Whitecap Blvd., going West on the Northern side of Whitecap Blvd. until reaching the canal just West of Isabella Ct. but East of Bonasse Ct., following the midline of that canal until reaching inland waterway at end of Isabella Ct., turning East into the midline of the inland waterway passing over Gypsy St., with Bounty Ave. on Northern side, at Northern corner of Cutlass Ave. and Western side Cuttysark St., heading South along Western side of Cuttysark St. a total of approximately 975 feet, turning East for approximately 1,200 feet to reach the Western side of S. Padre Island Dr., to North on S. Padre Island Dr. until intersecting with Northern side of Commodores St. Head West on the Northern side of Commodores St. until reaching canal, going North in the midline of the canal until Southern side of Jackfish Ave., heading East on Southern side of Jackfish Ave to Western side of S. Padre Island Dr. heading North/West on Western side S. Padre Island Dr. to the Northern start point.

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 39472.

TRD-201102042
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 7, 2011



Notice of Filing to Withdraw Service and Revise Tariff Pages to Reduce Rates Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of Peoples Telephone Cooperative, Inc.'s application filed with the Public Utility Commission of Texas (commission) on May 20, 2011, to withdraw a service, transfer existing cus-

tomers to an alternative service, and revise rates in its Member Services Tariff pursuant to P.U.C. Substantive Rule §26.208.

Docket Title and Number: Application of Peoples Telephone Cooperative, Inc. to Withdraw Service and Revise Tariff Pages to Reduce Rates, Pursuant to P.U.C. Substantive Rule §26.208; Docket Number 39419.

The Application: On May 20, 2011, Peoples Telephone Cooperative, Inc. filed an application to withdraw a service, transfer existing customers to an alternative service, and revise rates in its Member Services Tariff. Customers currently subscribing to Calling Number Delivery Service will be upgraded so that they receive Calling Name Delivery and Calling Number Delivery Service, with no change in their rates. In addition, Peoples Telephone customers that currently subscribe to both Calling Name Delivery and Calling Number Delivery Service will receive reduced rates for the combined service offering. Peoples Telephone proposes an effective date of July 1, 2011. The proceeding was docketed and suspended on June 6, 2011, to allow adequate time for review and intervention.

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. The deadline to intervene in this proceeding is June 20, 2011. All inquiries should reference Docket Number 39419.

TRD-201102040

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 7, 2011



Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

Terry County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Terry County Airport during the course of the next five years through multiple grants.

Current Project: Terry County. TxDOT CSJ No.: 1105BRNFD. Scope: Provide engineering/design services to rehabilitate and mark Runway 13-31; reconstruct west side hangar access taxiway; construct access taxiway and aprons for west side hangars; rehabilitate and mark north hangar access; rehabilitate and repair apron; rehabilitate taxiway B; extend existing apron south around T-hangars; install medium intensity runway lights at Runway 13-31; and replace rotating beacon and tower.

The DBE goal for the current project is 8%. TxDOT Project Manager is Paul Slusser.

Future scope work items for engineering/design services within the next five years may include the following:

1. Reconstruct RW 13-31
2. Overlay & mark TWs A, C, D, E, F, G, H and J

3. Reconstruct, widen and mark TW B
4. Construct hangar
5. Rehabilitate & mark RW 2-20
6. Construct new TW from apron to RW 20
7. Extend & mark parallel TW to RW 20
8. Extend TW B to RW 13
9. Replace MIRLs RW 2-20
10. Install signage RW 13-31
11. Install exit signs RW 2-20

Terry County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project description, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Terry County Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than July 12, 2011, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201102056

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 8, 2011



Aviation Division - Request for Proposal for Professional Engineering Services

The City of Big Spring, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Big Spring McMahon-Wrinkle Airport during the course of the next five years through multiple grants.

Current Project: City of Big Spring. TxDOT CSJ No.: 1108BIGSP. Scope: Provide engineering/design services to overlay area terminal apron (terminal apron pavement).

The DBE goal for the current project is 9%. TxDOT Project Manager is Paul Slusser.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate & mark RW 6-24
2. Rehabilitate & mark TWs A, B, D, E and F
3. Rehabilitate T-hangar access TW (east of Alpha)
4. Construct parallel TW E to RW 24 end
5. Replace MIRLs on RW 6-24
6. Install REIL RW 6-24
7. Replace PLASI with PAPI-4 RW 6-24
8. Reconstruct TW C with drainage
9. Construct new fuel farm (Jet A & Avgas tanks)

The City of Big Spring reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project description, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Big Spring McMahon-Wrinkle Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/business/projects/aviation.htm>. The form may

not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

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The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201102057

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 8, 2011



The University of Texas System

Award of Consultant Contract Notification

The University of Texas Health Science Center at Houston ("University"), in accordance with the provisions of Texas Government Code, Chapter 2254, entered into a contract for consulting services (the "Contract") with 1 Degree PR, LLC ("Consultant") as more particularly described in the Invitation for Offer IFO 744-1111 Creating a Communications Program (the "Invitation"), published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 681).

Project Description:

In accordance with the Invitation and Consultant's response thereto, Consultant shall Create a Communications Program.

Name and Address of Consultant:

1 Degree PR, LLC
2632 Sir Gawain

Lewisville, Texas 75056

Total Value of the Contract:

\$85,000.00

Contract Dates:

The Contract was executed by Consultant on April 15, 2011, and by University on April 15, 2011, and dated effective April 15, 2011.

Due Dates for Contract Products:

The Creating a Communications Program shall be completed and delivered to University no later than April 14, 2012.

The term of the Contract shall terminate on April 14, 2012.

TRD-201101972

Francie A. Frederick

General Counsel to the Board of Regents

The University of Texas System

Filed: June 1, 2011



Texas Windstorm Insurance Association

Request for Qualifications

Purpose of Request for Qualifications

On or after May 27, 2011, the Texas Windstorm Insurance Association (TWIA) will issue RFQ-Vendor Services (the "RFQ") for Adjusting Firms to qualify as "Eligible Applicants," eligible to serve as an Approved Vendor to provide adjusting services to the Association policyholder. As described in the RFQ, an Approved Vendor will provide staff to adjust claims that are assigned by the Association.

Application Form

The RFQ and application forms will be published on the TWIA website on or about May 27, 2011 at: <http://www.twia.org>. Further information regarding the RFQ will be available on TWIA's website at this address.

Approval Process

Applications must meet all requirements of the RFQ to be considered. Applications will be reviewed by the Association, and evaluated on the basis of the criteria in the RFQ. Once approved, an Eligible Applicant may be offered a contract to provide adjusters for outside field assignments. The Association upon completion of the evaluation process will determine the term of the RFQ.

Rights and Obligations

TWIA is not responsible for any costs incurred in responding to this RFQ, and reserves the right to accept or reject any or all applications. TWIA is under no obligation to award a contract on the basis of the RFQ. TWIA reserves the right to issue other RFQs for Approved Vendors, or for any other services in connection with claims handling, at the Association's discretion.

Contact Information

Any requests for information should be directed to:

Texas Windstorm Insurance Association

Attention: Kenneth Robbins

P.O. Box 99090

Austin, Texas 78709-9090

(512) 637-4056

krobbins@twia.org

TRD-201101974

Wesley Koehl

Administrative Assistant

Texas Windstorm Insurance Association

Filed: June 2, 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)